UNITED
NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Distr.
GENERAL

LOS/PCN/153 (Vol. XIII)
30 June 1995
ENGLISH
ORIGINAL: ARABIC/CHINESE/
ENGLISH/FRENCH/
RUSSIAN/SPANISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

REPORT OF THE PREPARATORY COMMISSION, UNDER PARAGRAPH 11 OF RESOLUTION I OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, ON ALL MATTERS WITHIN ITS MANDATE, EXCEPT AS PROVIDED IN PARAGRAPH 10, FOR PRESENTATION TO THE ASSEMBLY OF THE INTERNATIONAL SEABED AUTHORITY AT ITS FIRST SESSION

VOLUME XIII

Part 1

Draft final report of Special Commission 3
(LOS/PCN/SCN.3/CRP.17 and LOS/PCN/SCN.3/CRP.17/Add.1)
and
Amendments and comments relating to the draft final report
(CRP.18, CRP.19, CRP.20 and CRP.21)

Part 2

Draft provisional final report of Special Commission 3
(Chapter IV of LOS/PCN/130 - Consolidated provisional
final report of the Preparatory Commission, vol. I)

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LOS/PCN/SCN.3/1992/CRP.17
22 July 1992

ORIGINAL: ENGLISH

Part 1

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 10-21 August 1992

Draft final report of Special Commission 3

1. The object of the present draft final report is to provide an overview of the work of the Special Commission in discharging its mandate and to assist delegations in focusing their attention on areas where further work might be desirable.

2. Under resolution I, paragraph 5 (g), of the United Nations Convention on the Law of the Sea, the Preparatory Commission was entrusted with the task of preparing draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions. The Preparatory Commission established, at its first session, besides its plenary and the General Committee, four Special Commissions. Special Commission 3 was charged with the mandate to prepare rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area, i.e., the seabed mining code.

3. Special Commission 3 commenced its work (under the chairmanship of Mr. Hans Sondaal of the Netherlands) by identifying the issues contained in annex III, article 17, which require rules, regulations and procedures. These issues are: administrative procedures relating to prospecting, exploration and exploitation in the Area; the size of areas (mine sites); duration of operations; performance requirements including assurances, pursuant to article 4, paragraph 6 (c), of annex III of the Convention; categories of resources; renunciation of areas; progress reports; submission of data; inspection and supervision of operations; prevention of interference with other activities in the marine environment; transfer of rights and obligations by a contractor; procedures for transfer of technology to developing States in accordance with article 144 of the Convention and for their full participation in activities in the Area; mining standards and practices, including those

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relating to operational safety; conservation of marine resources and protection of the marine environment; definition of commercial production; qualification standards for applicants; establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors; apportionment of proceeds from mining operations; the incentives referred to in article 13 of annex III of the Convention; implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2 (d), of the Convention. Though the list of issues provided for in annex III, article 17, is extensive, it is not exhaustive. There are matters relating to the conduct of activities in the Area which are not included in that article, such as:

(a) Protection of human life (art. 146);

(b) Erection, emplacement and removal of installations used for carrying out activities in the Area (art. 147, para. 1);

(c) Prescription of period other than five years for issuance of production authorizations (art. 151, para. 2 (a));

(d) Implementation of paragraph 7 of article 151;

(e) Criteria and procedures for the implementation of the sponsorship requirements (annex III, art. 4, para. 3);

(f) Objective and non-discriminatory standards for the purpose of selection among applicants for production authorizations (annex III, art. 7, para. 2);

(g) Financial matters other than those referred to in annex III, article 17, e.g., annex III, article 13.

4. To facilitate its consideration of these issues, Special Commission 3 requested the Secretariat to prepare draft working papers on which the discussions in the Special Commission would be based.

5. In 1984, the Secretariat prepared a series of working papers:

(a) LOS/PCN/SCN.3/WP.1 - Seabed Mining Code (Background paper);

(b) LOS/PCN/SCN.3/WP.2 - Draft Regulations on Prospecting, Exploration and Exploitation - application for approval of plans of work (Background paper);

(c) LOS/PCN/SCN.3/WP.2/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - (application for approval of plans of work);

(d) LOS/PCN/SCN.3/WP.3 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

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(e) LOS/PCN/SCN.3/WP.3/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - content of application;

(f) LOS/PCN/SCN.3/WP.4 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

(g) LOS/PCN/SCN.3/WP.5 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - payment of fee (Background paper).

6. After the discussion of the working papers listed in the paragraph above, and in order to provide a focus and a tool for further deliberations, the Special Commission requested the Secretariat to prepare a comprehensive document incorporating the contents of the above-mentioned papers in the form of draft regulations. That document was issued in 1985 as LOS/PCN/SCN.3/WP.6 (Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area) and was accepted by the Special Commission as the basis for discussion.

7. The Special Commission later requested the Secretariat to prepare a series of addenda to document LOS/PCN/SCN.3/WP.6 in order to complete the set of working papers required to discharge its mandate. The following is a brief description of the contents of the working papers and of the discussions conducted in Special Commission 3. (The complete texts of the working papers are found in the annexes to the present report.)

LOS/PCN/SCN.3/WP.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area

8. This document was discussed at 31 formal and informal meetings of the Special Commission 3 in 1985 and 1986.

9. In the discussion of the document, differing views were expressed as to whether the application for designation of an area for the Authority and approval of a plan of work should occur in one stage, or whether the application would be composed of two stages: submission and approval of a plan of work. The central issue was the degree of detail to be included in the plan of work in the one-stage process, where the plan would have to cover both the applicant's mine site and that ultimately designated for the Authority, and the time of approval of the plan of work. The costs of preparing a detailed plan of work for the Authority site would have to be borne by the applicant in the one-stage process.

10. The reasons for supporting the one-stage approach were that: (a) the Convention did not provide for a two-stage procedure; (b) the Authority should not be placed at a disadvantage in obtaining knowledge of the particulars of the area for which an application was submitted; (c) since the Authority was responsible for the selection of the reserved area, it was necessary for the

Authority to have access to as much information as possible to enable it to make an informed decision on its selection; (d) in the absence of a plan of work for each of the two areas (one for the applicant, one reserved for the Authority), the Authority would have to rely solely on geological data, which would not be sufficient for an accurate assessment of the equal commercial value of both areas. It was also stressed that the one-stage approach would simplify administrative procedures.

11. On the other hand, the reasons for supporting the two-stage approach were that: (a) it had a legal basis in the Convention; (b) an applicant was not obliged to draw up a plan of work for the Enterprise since the Enterprise was an independent body; (c) it was not practical to draw up two plans of work since this would be costly and the plan of work for the Enterprise would probably be out of date by the time the Enterprise went into commercial production; (d) since the designation of areas would be done by random selection, it would obviate the need for submission of any data and would be the best guarantee for selecting two areas of equally estimated commercial value.

12. In the discussion a reference was also made to the relationship between transfer of technology and the plan of work, the need to incorporate indications of training programmes which were mainly linked to operations in the plan of work and financial terms of the contract relating to the application fee. Mention was also made of the issue of proprietary information, and the view was expressed that it should not be used to avoid giving the Authority the information it would need.

13. In June 1988 the Chairman of Special Commission 3 (Mr. Jaap Walkate of the Netherlands), after revising document LOS/PCN/SCN.3/WP.6, taking into account the views expressed in the discussion, issued document LOS/PCN/SCN.3/WP.6/Rev.1. In order to resolve the "one stage/two stage" question, the Chairman proposed that the application should be submitted in two parts, the first part containing data and information to be submitted by the applicant before the designation of the area and the second part containing data and information to be submitted by the applicant before the final approval of the plan of work.

14. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6 and WP.6/Rev.1, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.16, LOS/PCN/L.26 and LOS/PCN/L.32.

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LOS/PCN/SCN.3/WP.6/Add.1

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Procedures for Application, Approval and Issuance of Production Authorizations

15. The document was discussed during nine meetings of the Special Commission in 1989 and 1990.

16. Some of the views supported the production limitation formula, since it was felt that it would help integrate and stabilize mineral markets when seabed mining was in production. While stating concern for a stable market for the metals produced from deep seabed mining, some delegations were of the opinion that the formula was an adequate means for assuring favourable introduction of metals into the market. This opinion held that the inflexibility of the free market aspects of the deep seabed mining industry, as well as the inertia inherent in the long lead-in time for deep seabed mining projects, was far more important than any perceived inflexibility of the trend line in the production limitation formula. Concern was expressed about the effects of unrestricted or subsidized seabed mining operations on producers and consumers alike. At the same time the Special Commission was informed that the issue of "subsidized production" was being addressed in the negotiations being conducted by the General Agreement on Tariffs and Trade (GATT) and that the results should eventually enable the specific question of deep seabed mining subsidies to be settled.

17. Other views characterized the production limitation formula as an artificial restraint both on the commencement of seabed mining and on production levels. It was emphasized that the formula itself was one of the serious obstacles to universal acceptance of the Convention. In addition, it was stated, inter alia, that: (a) the limitation of deep seabed mining would not benefit consumer countries; (b) seabed mining would take place gradually in response to increased demand and substantially higher metal prices and, therefore, not destabilize the market; and (c) mining companies would not want to destabilize the market since that would have a direct effect on the economic viability of their deep seabed mining projects.

18. After detailed consideration of LOS/PCN/SCN.3/WP.6/Add.1 within the Special Commission, it was apparent at the time that a consensus had not emerged as to the suitability of the text as a basis for negotiation. For this reason a revision of the document was not prepared.

19. For further details on the issues of substance addressed during consideration of LOS/PCN/SCN.3/WP.6/Add.1, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.74 and LOS/PCN/L.79.

LOS/PCN/SCN.3/WP.6/Add.2

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract

20. The document was discussed at 30 meetings of Special Commission 3 in 1986-1988 and one of the main concerns expressed in the discussions regarded the current system of taxation, as prescribed in the Convention. Some of the issues raised in that context were whether the required payments imposed too heavy a burden on seabed miners and whether the choice of the system of payment which might involve an annual fixed fee, a production charge or a combination of a production charge and a share of net proceeds was too complicated.

21. In the course of discussions varying views were expressed. On the one hand it was felt that: changed economic and market circumstances called for a review of the system of payment and the rates of taxation; the front-end payments that were to be incurred before mining income was generated were onerous; and it was preferable to establish two levels of annual fixed fees - one for exploration only and the other for exploration and exploitation.

22. On the other hand, it was stated that: before mining income was generated, a reasonable payment should be made once prospective deep seabed miners had secured exclusive mining areas and had obtained exploration rights; lower rates of taxation of the mining income would not only reduce the revenues of the Authority, but also could give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a more lenient tax system; and mining States would diminish the revenue benefits for the Authority by seeking a reduction in tax revenues to it while imposing their own national taxes on operators.

23. Other issues raised in the discussions were that some of the complicated accounting and bureaucratic tasks involved in determining the tax base and the tax payments under the existing system might be too burdensome and expensive for both the Authority and the operator. It was also felt that it would be difficult at the time to attempt to develop a detailed set of rules for the purpose of taxation since the seabed mining industry had not yet been developed. It was suggested therefore that it would be more appropriate to establish certain principles on the basis of which detailed rules and regulations might be elaborated when deep seabed production was imminent.

24. Document LOS/PCN/SCN.3/WP.6/Add.2 was revised by the Chairman taking into account views expressed in the discussions and was issued as document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 on 25 May 1989.

25. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.2, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.38, LOS/PCN/L.52 and LOS/PCN/L.59.

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LOS/PCN/SCN.3/WP.6/Add.3

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (Draft Regulations on Financial Incentives)

26. The document was discussed at two meetings of Special Commission 3 in 1987. Differing views were expressed as to whether incentives should be an integral component of the financial rules or whether they should be provided solely at the discretion of the Authority and only in exceptional circumstances.

27. The reason for favouring the incentives as an integral part of the financial rules was that the rules would then contain a clear mechanism and an institutional framework based on stable criteria and non-discriminatory procedures under which uniform and predetermined incentives would be provided automatically in compliance with conditions detailed in advance.

28. The other point of view was that the provision of financial incentives should not be viewed as creating an exception to the financial terms of contract. The availability of incentives should not be automatic but should only be awarded on an ad hoc, case-by-case basis at the discretion of the Authority. It was also suggested that the provision of such incentives should not amount to subsidizing seabed mining, especially to the detriment of land-based mining.

29. Since the discussion concentrated mostly on procedural rather than substantive issues, the Chairman decided not to revise the original draft but to include it as part B in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1, which contained the revised draft financial terms of contract.

30. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.3, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.52.

LOS/PCN/SCN.3/WP.6/Add.4

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Draft Regulations on the Transfer of Technology until Ten Years after Commencement of Commercial Production by the Enterprise)

31. The document was discussed at 28 meetings of Special Commission 3 in 1988 and 1989 and set out, *inter alia*, procedures for the Enterprise to follow if it failed to obtain deep seabed mining technology on the open market at fair and reasonable commercial terms and conditions.

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32. The working paper attempted to strike a balance between the obligation of the Enterprise to undertake adequate efforts to procure technology on its own, and the obligation of the contractor to assist it and, if required, to negotiate acceptable terms for its sale if the Enterprise failed to obtain such technology.

33. Differing views were expressed in the discussion.

34. According to one view, the seabed mining technology to be transferred to the Enterprise should cover processing technology as well. It was also felt that "essential national security reasons", referred to in article 302 of the Convention, should not constitute a loophole for States seeking to avoid technology transfer obligations. If the technology could not be transferred for security reasons, it could not be utilized by the operator in the international seabed area, since that would be disadvantageous to the Enterprise. It was further suggested that procedures requiring that the organs of the Authority review their decision to invoke a contractor's undertaking to transfer technology could cause unnecessary delays and obstruct the implementation of transfer obligations.

35. According to the other view, the provisions for the compulsory transfer of technology were a disincentive to investment and technology development, and the Convention did not envisage the transfer of processing technology. It was pointed out that, in regard to seabed mining technology, the Enterprise should adhere to regular commercial practices since adequate technology would be available on the open market. The Enterprise would be assisted by contractors who would provide general descriptions of equipment and methods of such technology and information as to where similar technology might be obtained. It was also suggested that joint ventures would provide the most effective means for the transfer of technology, which would be subject to conditions to be agreed among the parties concerned.

36. Another view expressed was that there was doubt whether the Convention required the obligatory transfer of technology to developing States if they were a partner in a joint venture with the Enterprise. It was felt that in that case the obligation to transfer would be limited only to the Enterprise and not to the other partner. Consequently, it was stated, there appeared to be a contradiction between these provisions and those of annex III, article 5. On the other hand, it was pointed out that there was no such contradiction, since those provisions related to different aspects and therefore both the Enterprise and developing States would be eligible for the transfer of technology.

37. A further view was expressed that there was a need for an article on training, to be included in any provisions dealing with the transfer of technology, since that was part of the obligation of the contractor and was consistent with the requirements that the contractor would have to fulfil in respect to his plan of work.

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38. The working paper of the Secretariat, LOS/PCN/SCN.3/WP.6/Add.4, was revised by the Chairman and was issued as document LOS/PCN/SCN.3/WP.6/Add.4/Rev.1 on 9 August 1990.

39. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.4 and LOS/PCN/SCN.3/WP.6/Add.4/Rev.1, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.59, LOS/PCN/L.64 and LOS/PCN/L.69.

LOS/PCN/SCN.3/WP.6/Add.5

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Protection and Preservation of the Marine Environment from Activities in the Area)

40. The document was discussed at 25 meetings of the Special Commission in 1990 and 1991. In the course of the discussions it became clear that all States wished to ensure the protection and preservation of the marine environment. However, it was also felt that very little was known at the time regarding the environmental consequences of deep seabed mining and that significantly more long-term and substantial research would have to be conducted to enable informed decisions to be made at the appropriate time.

41. The working paper had been prepared taking into account the mandate of the Authority to adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from exploration for, and exploitation of the resources of the Area. The draft regulations drew upon a number of sources: first, the relevant articles of the Convention, particularly the provisions to be found in Parts XI and XII; secondly, the legislation and regulations of States concerned with deep seabed mining; and thirdly, other multilateral conventions, such as that relating to Antarctic mineral resources.

42. The most difficult aspect of the working paper had been to ensure that there was a fair balance between the need to preserve and protect the marine environment and the development of the resources of the international seabed area; and that the regulations sought to define the meaning of "serious harm to the marine environment" by excluding certain effects on the marine environment arising from activities in the Area assessed or judged to be acceptable by the Authority according to the relevant rules and regulations. In so doing, the draft regulations ensured that deep seabed mining would not be unreasonably restricted.

43. In order to assess the effect of each contractor's activities in the Area, the draft regulations provided for the establishment of environmental reference zones. They expressly provided for the submission of an environmental report or an environmental impact statement, based on the relevant data collected during the prospecting stage, that had to be submitted

to the Legal and Technical Commission before the approval of any plan of work for exploration. At the exploitation phase, before the Legal and Technical Commission recommended the approval of a plan of work for exploitation, each applicant would be required to submit an environmental impact statement, which would contain more detailed requirements.

44. In order to assist the Authority in monitoring the contractor's compliance with the terms and conditions of the contract and with the rules and regulations relating to the protection and preservation of the marine environment arising from activities in the Area, contractors would be required to submit an annual report on the effects of their activities in the Area on the marine environment. The regulations established a system of inspection enabling the Authority to send its inspectors on board vessels and installations used by the contractor in a form of cooperation by the Authority and by the Sponsoring State or States. The provisions also provide for procedures for the emergency suspension or adjustment of operations.

45. The provisions on the liability of contractors for serious harm to the marine environment were of crucial importance for deep seabed mining, where harm might occur beyond national jurisdiction and where harm which is likely to occur is harm to the marine environment itself rather than to a person or property.

46. Views of a general nature were expressed, one of which was the need to conduct further environmental studies of the marine environment in the Area. Safe methods of exploitation could be established only on the basis of appropriate comprehensive experimental data and information on any effects of exploitation of polymetallic nodules on the living or non-living components of the marine environment and associated ecosystems. Effective monitoring of the Area was needed. In this regard, the view was expressed that since the start-up of deep seabed mining would be delayed, this would provide ample time for careful research aimed at protecting the marine environment. Some views stressed the potentially serious problems that could be posed by deep seabed mining. It was held that since deep seabed mining might not occur for many years to come, the Preparatory Commission should map out a strategy for preserving the seabed environment and not merely establish a set of formal procedures. This view also called for the mobilization of public opinion and governmental awareness and suggested that an ad hoc group of experts be set up to make recommendations in that connection.

47. There was general support for convening a seminar on the environmental impact of deep seabed mining and the means for assessing it. It was felt that the seminar would enhance the Special Commission's knowledge to enable it to draft these regulations. A number of delegations with technical data and expertise in the subject-matter, including some registered pioneer investors, stated their willingness to cooperate in the exchange of data and make some of their experts available for the seminar.

48. Four meetings of the Special Commission were devoted to the seminar on the environmental aspects of deep seabed mining. Experts from the Federal

Republic of Germany, France, Norway, Sweden, the Union of Soviet Socialist Republics, the United States of America, Japan and India participated in the Seminar in their personal capacities as guest speakers. Among the issues addressed by the seminar were: environmental aspects of deep seabed mining; characteristics of the deep seabed environment; chemical analysis in assessing the environmental impact of seabed mining; the relationship between manganese nodule formation and the sedimentary processes in the Clarion-Clipperton area and its importance for environmental studies on deep seabed mining in one test area; the impact of deep seabed activities over time and space; field and computer simulation for predicting the impact of seabed mining on the ocean environment; characterization of manganese nodule processing waste; the current state of seabed mining and environmental research in Japan; the Deep Ocean Mining and Environmental Study (DOMES); relevant research conducted at the Scripps Institution of Oceanography; the need for large-scale experiments and monitoring; the status of seabed mining in India; the role of environmental reference zones; optimization of international reference areas and the application of the "precautionary principle" in assessing the impact of seabed mining.

49. The working paper was revised by the Chairman following several sessions of informal consultations and was issued under a new title, "Protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area", in document LOS/PCN/SCN.3/WP.6.Add.5/Rev.1 on 27 August 1991.

50. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.5, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.79, LOS/PCN/L.84 and LOS/PCN/L.89.

LOS/PCN/SCN.3/WP.6/Add.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accommodation of Activities in the Area and in the Marine Environment)

51. The document was discussed during five meetings of Special Commission 3 in 1991. There was a convergence of views that all activities should be accommodated in the Area and in zones outside national jurisdiction as long as those activities did not interfere with one another. It was felt also that while it was important to promote the principle of "reasonable regard", some priorities might have to be determined, and that the role of competent international organizations should be more clearly defined.

52. All these issues were addressed in informal consultations conducted by the Chairman, which enabled him to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.6/Rev.1 on 28 June 1991.

53. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.6, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.89.

LOS/PCN/SCN.3/WP.6/Add.7

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accounting Principles and Procedure)

54. The document was discussed at 15 meetings of the Special Commission in 1991 and 1992. Two main views evolved from the discussion: on one hand, it was felt that complicated accounting principles and procedures were not required, especially if the contractor selected the production charge system of paying revenues to the Authority. It was pointed out that once the quantities of polymetallic nodules recovered and the amounts of processed metals produced by the contractor were known, the production charge system would be simple enough to avoid the need for a detailed examination of the contractor's accounting records.

55. The other view was that, while there were practical distinctions between payment options, those distinctions should not be seen as exempting some of the contractors from complying with accounting principles and procedures applicable to others. Furthermore, the Authority should retain the right to examine the contractor's accounting records since they would have to contain information and data other than the system of payment, e.g., development costs and other costs borne by the contractor.

56. It was also felt that, even if the choice was made to pay only the production charge, it would not be sufficient to create a situation where the Authority would not be empowered to verify how the contractor determined the production charge he would be required to pay. It was further argued that the Authority, in order to dispel any doubts on how the production charge was determined, should have access to all information going beyond the quantity of nodules and the average market price of processed metals.

57. After detailed consideration of the working paper, an informal compromise proposal relating to the calculation of the production charge was suggested. It provided for an arrangement between the contractor and the Authority immediately prior to commencement of commercial exploitation by which certain parameters relating to the quantities of processed metals to be produced in a given period and financial arrangements would be agreed upon. It was suggested that this would be a kind of confidence-building measure which would reduce the likelihood of the Authority needing to resort to a safeguard clause entailing an examination of the contractor's books.

58. Initially it appeared that the above informal proposal might command a consensus among the delegations participating in the informal consultations. It was also the view of several delegations that certain procedures of an

accounting nature should apply on a uniform basis to all contractors, and not only on an exceptional basis, as would be the case in the proposed "safeguard clause". It was stressed in this context that the Authority and the contractor must know, from the onset of their contractual relationship, what information would be required to settle any dispute, including information of a financial and accounting nature to be submitted by the contractor in close consultation with the Authority. However, after some discussion certain reservations were still maintained, especially with respect to the need for a "safeguard clause" which the Authority could invoke in situations where any discrepancies existed between the accounting of the contractor and that of the Authority. At that point it was felt that further discussions within the informal consultations or formal meetings of the Special Commission on the subject would not achieve a positive result.

59. Following lengthy discussions at both the formal and informal level within the Special Commission, it became apparent that a consensus which could provide a basis for an integrated revised text had not emerged. For this reason a revision of the document has not been prepared.

60. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.7, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.94 and LOS/PCN/L.99.

LOS/PCN/SCN.3/WP.6/Add.8

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Labour, Health and Safety Standards)

61. The document was discussed at six meetings of the Special Commission during the spring session of 1992.

62. The view was expressed that existing conventions adopted under the auspices of the International Maritime Organization (IMO) and the International Labour Organisation (ILO), as well as national legislation on health and safety standards, were adequate to cover activities in the Area and therefore it was not necessary to duplicate the provisions of those conventions in the seabed mining code.

63. On the other hand, it was stated that although existing conventions were relevant, seabed mining would be a unique activity requiring new standards since current ones would not be appropriate in all cases.

64. A further view was expressed that the key issue to be resolved was to what extent existing national and international norms were related to activities in the Area. It was suggested that all human activities in the Area would take place on board vessels which would be under the jurisdiction of States, i.e., the Flag State. Therefore, any norms would be applicable

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only to those vessels and not to the deep seabed itself. The view was also expressed that there was a degree of competence of the Authority in regard to health and safety standards as provided for in the Convention. Since the mining code would be a self-contained instrument without prejudice to existing criteria and since there was a difference between activities conducted outside the Area, which were not subject to the supervision of the Authority, and those conducted inside the Area, which would be subject to such supervision, this distinction should be explicitly stated.

65. Although during the informal consultations it was possible to reach a degree of consensus on the revision of certain articles of the working paper, it was not possible to complete the revision by the Special Commission (in the context of the informal consultations). A conference room paper containing preliminary suggestions to facilitate the revision of document LOS/PCN/SCN.3/WP.6/Add.8 has been prepared and issued as LOS/PCN/1992/CRP.15.

66. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.8, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.99.

CONCLUSION

67. By the end of the tenth session of the Preparatory Commission, Special Commission 3 had completed the initial consideration of the working papers prepared by the Secretariat as the basis for the deep seabed mining code. While progress has been made in identifying and resolving some issues, the Special Commission has not yet reached final agreement on any of the working papers.

68. There is a general perception that the Special Commission has only limited time available to discharge its mandate in the most effective manner possible. It would be appreciated if delegations would address especially those areas where progress is most likely.

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Annex

DRAFT RULES, REGULATIONS AND PROCEDURES FOR THE EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA*

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* Working papers have been prepared by the Secretariat and revisions have been prepared under the responsibility of the Chairman.

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LOS/PCN/SCN.3/WP.6*
15 March 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

I. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Working paper by the Secretariat

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* Reissued for technical reasons.

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EXPLANATORY NOTE

1. At the end of its informal meetings, held in Geneva from 13 August to 5 September 1984, Special Commission 3 requested the Secretariat to prepare, inter alia, draft regulations on the content of applications for approval of plans of work, procedure relating thereto and terms of the contract (LOS/PCN/L.11).

2. Prior to the formulation of these drafts, the original headings and subheadings of matters requiring regulation which were identified in the annex to Secretariat paper LOS/PCN/SCN.3/WP.1 were reconstructed in a format similar to that of national mining codes. Thus, this set of articles begins with scope and use of terms, and goes on in a sequential order to deal with prospecting and applications for approval of plans of work for activities in the Area.

3. This restructuring necessitated the reproduction and incorporation in this document of draft articles that had been presented by the Secretariat in documents LOS/PCN/SCN.3/WP.2/Add.1 and LOS/PCN/SCN.3/WP.3/Add.1 and discussed by Special Commission 3 at the Geneva meetings referred to above (LOS/PCN/L.11). Some improvements and adjustments have been made to those articles with a view to integrating them under the new structure. These changes are not intended to alter the substance.

4. As pointed out in the introduction to Secretariat paper LOS/PCN/SCN.3/WP.1, the body of regulations that will be drafted will focus on regulations that the Preparatory Commission was mandated to formulate as a priority task, namely those regulations which are necessary "to enable the Authority to commence its functions" (resolution I, para. 5).

5. In studying this first set of articles it is apparent that a number of matters need to be further elaborated in the regulations themselves or in rules subsidiary to them in order to create more certainty and clarity. Further precision is required, for instance with respect to the scope of the undertakings by the prospector, the scope and means of the verification by the Authority on the compliance by the prospector with the Convention and the rules, regulations and procedures; the size and shape of the application areas; the criteria and standards to estimate the commercial value of application areas; the determination of the Authority's costs for the processing of applications and the adjustment of the application fees; and the confidentiality of data and information submitted by the applicant.

6. The next sets of draft regulations will deal with stages subsequent to the approval of the plan of work, such as conclusion of contracts; financial terms of the contract; terms and conditions for the sale of technology under the transfer o technology provisions; performance requirements; production authorization; accommodation of other marine activities; and protection of the marine environmen

7. The internal procedures for the Council and the Legal and Technical Commissio regarding the consideration of applications and decision-making will be dealt with in the rules of procedure of those bodies.

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8. At its last meeting, the Special Commission discussed the question of whether there should be a one-stage or two-stage procedure (selection of site followed by submission of a plan of work) for an application. While drafting these regulations, it was noted that certain issues required further consideration by the Special Commission before it finally decided on the procedure to adopt. Accordingly, texts have been provided on both procedures for comparison. The first procedure is reflected in articles 16 to 34, according to which the applicant is required to submit only one application with respect to designation and allocation of areas and approval of plans of work. According to this procedure, the applicant will have to submit a plan of work, including data that will enable the Authority to assess the commercial value of the two parts of the application area and identifying any differences between the two areas.

9. The two-stage approach is contained in the annex to this document and entails separate stages of applications and decision-making regarding, at an initial stage, the designation and allocation of areas and, at another stage, approval of plans of work and the reservation of areas.

10. Generally, in drafting these regulations, an attempt has been made to make the rules as simple, logical, concise and self-contained as possible. However, these regulations do not contain provisions of the Convention dealing with general principles and objectives of part XI which are constitutional in character and not of a regulatory nature.

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PART I - INTRODUCTION

Article 1

Scope of these regulations

1. These regulations apply to prospecting, exploration and exploitation of polymetallic nodules in the Area.

Article 2

Use of terms

For the purposes of these regulations:

(1) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area; 1/

(2) "allocated area" means the area allocated in accordance with article 35 of the annex, and for which a certificate of allocation has been issued pursuant to article 37 of the annex;

(3) "applicant" means a State or entity which makes an application in accordance with these regulations; 2/

(4) "application area" means the total area proposed by an applicant, which need not be a single continuous area and which is sufficiently large and of sufficient estimated commercial value to allow two mining operations;

(5) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; 3/

(6) "Authority" means the International Sea-Bed Authority;

(7) "certifying State" means a State which has been recognized as such by the Preparatory Commission in accordance with the Rules for the Registration of Pioneer Investors; 4/

1/ Article 1, para. 1 (3).

2/ LOS/PCN/WP.16/Rev.1, Rule 1 (1).

3/ Article 1, para. 1 (1).

4/ Resolution II, para. 1 (c).

(8) "commercial production" means sustained large-scale polymetallic nodule recovery operations which yield a quantity of polymetallic nodules sufficient to allow large-scale production for the purpose of marketing or the commercial use of such nodules, rather than production intended for information gathering, analysis or the testing of plant and equipment; 5/

(9) "contract area" means the area covered by a contract;

(10) "contractor" means a State or entity which has signed a contract with the Authority to carry out activities in the Area;

(11) "Convention" means the United Nations Convention on the Law of the Sea;

(12) "co-ordinates" means a list of the geographical co-ordinates or points in accordance with the World Geodetic System; 6/

(13) "Council" means the Council of the Authority;

(14) "designated representative" means the person or the authority designated by a proposed prospector, prospector applicant or contractor to represent it as its agent for purposes of these regulations;

(15) "environmentally protected area" means an area designated as such by the Authority in accordance with its rules, regulations and procedures; 7/

(16) "exploitation" means the commercial recovery of polymetallic nodules;

(17) "exploration" means:

(a) the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors which must be taken into account in exploitation; and

(b) the design, construction and testing of plant and equipment for the use in exploitation;

(18) "Legal and Technical Commission" means the Legal and Technical Commission of the Council;

(19) "minerals" means resources when recovered from the Area; 8/

5/ A3/17 (2) (g).

6/ LOS/PCN/L.11.

7/ Article 145 and A3/17 (2) (f).

8/ Article 133 (b).

(20) "pioneer investor" means any State, state enterprise or natural or juridical person which has been registered as a pioneer investor in accordance with the Rules for the Registration of Pioneer Investors;

(21) "polymetallic nodules" means one of the resources of the Area consisting of any deposit or accretion of nodules, on or just below the surface of the deep sea-bed, which contain manganese, nickel, cobalt and copper; 9/

(22) "prospecting" means the taking of geophysical, geochemical, oceanographic, or atmospheric measurements, the collecting of rock, sediment, and mineral samples from the surficial layers of the sea-bed, and establishing maps of data and sample locations, provided that such activities do not significantly alter the surface or subsurface of the sea-bed or significantly affect the environment or remove an appreciable quantity of material, for the purpose of evaluating the exploitability of the resources of a specific area.

(23) "prospecting area" means that part of the Area for which a notification has been submitted and the Authority has acknowledged is available for prospecting in accordance with these regulations;

(24) "prospector" means a State or entity which engages in prospecting in accordance with these regulations;

(25) "Preparatory Commission" means Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea;

(26) "reserved area" means the area reserved, in accordance with article [ ], solely for the conduct of activities by the Authority through the Enterprise or in association with developing States Parties; 10/

(27) "Resolution II" means resolution II of the Third United Nations Conference on the Law of the Sea;

(28) "resources" means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the sea-bed, including polymetallic nodules; 11/

(29) "Secretary-General" means the Secretary-General of the Authority;

(30) "sponsoring State" means a State Party which submits a certificate of sponsorship of an applicant in accordance with article [19] and which assumes responsibilities in accordance with article [22];

9/ Resolution II, para. 1 (d).

10/ A3/8.

11/ Article 133 (a).

(31) "State Party" means a State which has consented to be bound by the Convention and for which the Convention is in force. State party includes mutatis mutandis an entity entitled to become a Party to the Convention in accordance with the conditions relevant to each such entity; 11 bis/

(32) Others.

PART II - PROSPECTING

SECTION 1 - NOTIFICATIONS OF PROSPECTING

Article 3

Notification to the Authority

1. A proposed prospector shall notify the Authority of its intention to engage in prospecting.

2. Notifications by the Enterprise shall be submitted by its Governing Board.

3. Notification by a State or by an entity shall be submitted by its designated representative.

4. Notifications shall be addressed to the Secretary-General.

Article 4

Time of submission of notifications

Notifications may be submitted to the Authority at any time.

Article 5

Form of notifications

1. Notifications shall be submitted in the prescribed form and shall conform to the requirements set forth in these regulations.

2. Notifications shall be submitted in [ ] copies in one of the languages of the Authority.

3. The original notification and each copy shall be signed by the designated representative of the proposed prospector.

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11 bis/ Article 1, para. 2.

Article 6

Content of the notification 12/

Each notification shall contain:

(a) the name, nationality and mail, cable and telex addresses of the proposed prospector and its designated representative;

(b) the co-ordinates of the broad area or areas within which prospecting is proposed to be conducted;

(c) the prospecting programme to be undertaken including the date of commencement and the anticipated duration, and information on the method and equipment to be used;

(d) a written undertaking in the prescribed form to comply with the Convention and the relevant rules, regulations and procedures of the Authority concerning:

(i) co-operation in the training programmes in connection with marine scientific research and transfer of technology as referred to in the Convention; 13/

(ii) protection of the marine environment; 14/ and

(iii) acceptance of verification by the Authority of compliance therewith.

Article 7

Recording and transmittal of notifications

1. Each notification shall be recorded by the Secretary-General upon receipt.

2. The record shall contain:

(a) the time and date of receipt of the notification;

(b) a list of attachments and annexes thereto;

(c) the name and address of the proposed prospector and of its designated representative.

12/ Processing of notifications will entail administrative costs. The Commission may wish to provide for the payment of such an administrative fee which may be prescribed by the subsidiary rules.

13/ A3/2 and articles 143 and 144.

14/ Article 145.

3. The Secretary-General shall promptly notify the President and members of the Council and the Chairman and members of the Legal and Technical Commission of the receipt of such notification.

4. The Secretary-General shall circulate the particulars recorded to all members of the Authority. 15/

Article 8

Acknowledgement or receipt of notifications

The Secretary-General shall promptly acknowledge in writing to the designated representative of the proposed prospector the receipt of the notification and the attachments and annexes thereto, specifying the time and date of receipt.

15/ LOS/PCN/WP.16/Rev.1, Rule 10.

SECTION 2 - CONSIDERATION OF NOTIFICATIONS AND COMMUNICATION OF THE COUNCIL'S DECISION

Article 9

Review and consideration of notifications 16/

1. Upon acknowledgement of the receipt of a notification by a proposed prospector, the Secretary-General shall promptly refer the notification to the Legal and Technical Commission for review at its next meeting.

2. If a notification includes any part of an allocated area, an area designated as a reserved area, an environmentally protected area or an area for which an application for allocation and designation is pending, or the written undertaking is not satisfactory, the Secretary-General upon advice of the Legal and Technical Commission shall so inform the proposed prospector. The proposed prospector may amend and resubmit its notification.

3. If the particulars of the notifications fulfil the requirements of these regulations and the undertaking is satisfactory, the Secretary-General upon advice of the Legal and Technical Commission shall record the notification in the register maintained for that purpose and so inform the Council and the prospector.

Article 10

Prospecting activities 17/

1. Prospecting shall be conducted in accordance with these regulations and may commence only after the prospector has been informed by the Secretary-General that its notification has been recorded pursuant to article 9, paragraph 3.

2. Prospecting shall not confer on the prospector any rights with respect to resources of the prospecting area. A prospector may, however, recover a reasonable quantity of minerals to be used for testing.

3. Prospecting may be conducted simultaneously by more than one prospector in the same area or areas. 18/

4. Prospecting shall be without time-limit. 19/

16/ Special Commission 3 may wish to set up specific time-limits for the actions mentioned in this article.

17/ A3/2.

18/ A3/2 (1) (c).

19/ A3/17 (2) (b) (i).

SECTION 3 - SUBMISSION OF REPORTS TO THE AUTHORITY

Article 11

Reports and other information

1. A prospector shall inform the Secretary-General of any change in the information contained in the notification.

2. A prospector shall file an annual report to the Authority within 90 days of the end of each calendar year. 20/

3. The report shall contain, inter alia:

(a) the status of its prospecting activities, including data on the amount of polymetallic nodules recovered for the purpose of testing;

(b) information on its compliance with its undertaking;

(c) any data on information obtained during prospecting relating to the protection of the environment;

(d) reports on any training programmes in which it participated and costs incurred;

(e) observations on any activities affecting safety at sea and accommodation with other marine activities.

4. Reports shall be addressed to the Secretary-General who shall submit them to the Council.

5. Reports shall be in one of the languages of the Authority.

PART III - APPLICATIONS FOR APPROVAL OF PLANS OF WORK

SECTION 1 - GENERAL

Article 12

Right to apply

The following entities have the right to apply to the Authority for approval of a plan of work either for exploration and exploitation or for exploration or for exploitation:

(a) the Enterprise, on its own behalf or in a joint arrangement;

20/ A3/2 (1) (b).

/...

(b) States Parties or state enterprises or natural or juridical persons which possess the nationality of States Parties are effectively controlled by them or their nationals, when sponsored by such States or any group of the foregoing which meets the requirements of these regulations. 21/

Article 13

Time of submission for approval of plans of work

1. Applications may be submitted at any time, except as provided in paragraphs 2 and 3.

2. Applications by pioneer investors shall be submitted within six months from the entry into force of the Convention.

3. Applications by the State or entities entitled to apply for a reserved area may be submitted at any time after such an area becomes available following a decision by the Enterprise that it does not intend to carry out activities in that area in accordance with the Convention. 22/

Article 14

Submission of applications

1. Applications shall be submitted by the applicant's designated representative.

2. Applications by the Enterprise shall be submitted by its Governing Board. 23/

Article 15

Form of applications

1. Applications shall be submitted in the prescribed form and shall be in conformity with the requirements set forth in these regulations.

2. Applications shall be submitted in [ ] copies in one of the languages of the Authority.

3. The original application and each copy shall be signed by the designated representative of the applicant.

21/ Article 153, para. 2 and A3/3 (1).

22/ A3/9 (4).

23/ A4/6 (c).

/...

SECTION 2 - CONTENT OF THE APPLICATION

Article 16

Identification of the applicant

1. Each application shall contain the name and mail, cable and telex addresses of the applicant and its designated representative.

2. Applications by a state enterprise, or by a natural or juridical person shall contain information on its nationality or control by a State Party or its nationals, or States Parties or their nationals, the name of the sponsoring State or States and, as appropriate, its place of registration and its principal place of business. Applications by a juridical person shall also include a copy of its certificate of registration.

3. Applications by a group of entities shall contain the required information with respect to each component of the group.

Article 17

Evidence of nationality or control

1. Applications by entities other than States Parties or the Enterprise shall include certificates or other official documentation issued by the sponsoring State or States confirming that:

(a) the applicant is a national of such State or States; or

(b) the applicant is subject to the effective control of such State or States or their nationals. 24/

2. The certificates shall be submitted in the prescribed form.

3. This article applies mutatis mutandis to entities in a joint arrangement 25/ with the Enterprise.

Article 18

Sponsorship

1. Applications by an entity other than a State Party or the Enterprise, shall be accompanied by a certificate of sponsorship issued by the State Party of which it is a national or by which it is effectively controlled. In the cases of

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24/ Article 153 (2) (b) and A3/4 (1).

25/ A3/11.

/...

applications submitted by pioneer investors, the certifying State or States shall be deemed to be the sponsoring State or States, provided that the certifying State or States are Parties to the Convention. 26/

2. If an applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State Party, each such State Party shall sponsor the application. 27/

3. If an applicant has the nationality of one State Party or States Parties and is effectively controlled by another State Party or States Parties or by their nationals, all such States Parties shall sponsor the application. 28/

4. This article applies mutatis mutandis to entities in a joint arrangement with the Enterprise.

Article 19

Form of the certificate of sponsorship

1. A certificate of sponsorship shall be submitted by each sponsoring State Party in the prescribed form and shall conform to the requirements set forth in these regulations.

2. A certificate shall be submitted in [ ] copies in one of the languages of the Authority.

3. The original certificate and each copy shall be signed by an authorized official of each sponsoring State Party.

Article 20

Content of the certificate of sponsorship

Each certificate of sponsorship shall contain:

(a) the name of the applicant;

(b) the name of the sponsoring State Party;

(c) the date of ratification of or accession to the Convention by the sponsoring State Party;

26/ Article 153 (2) (b); A3/4 (1) and (3) and resolution II (8) (b).

27/ A3/4 (3).

28/ Ibid.

/...

(d) a statement as to whether the applicant was a registered pioneer investor;

(e) a statement as to whether the sponsoring State Party was a certifying State;

(f) a declaration that the State Party sponsors the applicant; and

(g) a declaration that the sponsoring State Party assumes responsibility in respect of the application in accordance with article 22 of these regulations.

Article 21

Duration and termination of sponsorship

1. Each applicant shall have the required sponsorship throughout the period of the contract.

2. If a State Party terminates the sponsorship the Secretary-General shall be notified thereof by the State or States concerned in writing. Termination of sponsorship shall take effect [ ] months after the date of receipt of the notification, unless the notification specifies a later date.

3. In the event of termination of sponsorship the contractor shall within [ ] months obtain another sponsor meeting the requirements prescribed in these regulations.

4. Failure to obtain a sponsor within the required period shall result in the termination of the contract.

Article 22

Responsibility of a sponsoring State

Each sponsoring State shall have the responsibility to ensure, within its legal system, that a contractor sponsored by it shall carry out activities in the Area in conformity with the terms of its contract and its obligations under these regulations. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and has taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance with such obligations by persons under its jurisdiction. 29/

29/ Article 139 (1) and A3/4 (4).

/...

Article 23

Responsibility on termination of sponsorship

A sponsoring State shall not be discharged by reason of the termination of its sponsorship from the financial and contractual obligations which accrued while it was a sponsoring State, nor shall such termination affect any right, obligation or legal situation of that State created during its sponsorship. [30]

Article 24

Financial capabilities

1. Each application shall contain sufficient information specific enough to enable the Council to determine whether an applicant is financially capable of carrying out the proposed plan of work and of fulfilling its financial obligations to the Authority. [31]

2. Such information shall include:

(a) an estimate of the costs of the proposed plan of work prepared in accordance with the accounting rules, regulations and procedures; [32]

(b) a description of the financial plan to pay for such costs;

(c) data on the availability of capital, credit or other financial resources at the disposal of the applicant. [33]

3. (a) An application by the Enterprise shall include confirmation by the Governing Board of the availability of funds to meet such costs;

(b) An application by a State party or a state enterprise shall include a statement by the State party or the sponsoring State party certifying that the applicant has the necessary financial resources to meet such costs; [34]

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[30] Article 317, para. 2.

[31] A3/4 (1) and (2) and LOS/PCN/L.11, para. 12.

[32] A3/13 (6) (k) refers to "generally recognized accounting principles". It is presumed, however, that the Authority will wish to establish its own accounting principles and procedures which would be used, *inter alia*, for such projections.

[33] LOS/PCN/L.11, para. 12.

[34] A3/4 (5) and LOS/PCN/L.11, para. 13.

/...

(c) An application by a natural or juridical person shall include copies of its audited financial statements, including balance sheets and profit and loss statements, for the most recent three years: and

- (i) if the applicant is a newly organized entity and an audited balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the applicant;
- (ii) if the applicant is controlled by another entity which is to be financially responsible for the proposed plan of work, copies of such financial statements of such other entity;
- (iii) if the applicant is controlled by a State Party or state enterprise which is to be financially responsible in whole or in part for the proposed plan of work, the statement referred to in subparagraph (b);
- (iv) if the applicant is a group of entities, copies of such financial statements for each component of the group;

(d) If an applicant referred to in subparagraph (c) intends to finance the proposed plan of work in whole or in part by borrowings, its application shall include:

- (i) information specifying the sources of such borrowings;
- (ii) the anticipated schedule for the repayment of principal and the payment of interest;
- (iii) if such borrowings are to be guaranteed by another entity, the most recent audited balance sheet of such entity or, if not relevant, a pro forma balance sheet certified by an appropriate official;
- (iv) if such borrowings are to be guaranteed by a sponsoring State Party, a statement by that State Party certifying that the applicant has the necessary financial resources to meet such guarantees;

(e) If the applicant is a group of entities in a joint arrangement, each entity shall provide the information required by this article.

Article 25

Technical capabilities [35]

1. Each application shall contain sufficient information to enable the Council to determine whether an applicant is technically capable of carrying out the proposed plan of work.

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[35] A3/4 (2) and A3/5 (1).

/...

2. Such information shall include:

(a) a general description of the applicant's previous experience, if any, relevant to the proposed plan of work;

(b) a general description of the knowledge, skills and expertise relevant to the proposed plan of work which the applicant possesses or expects to obtain from others;

(c) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work, including environmental monitoring equipment;

(d) the curricula vitae of the persons to be responsible for the conduct of the proposed plan of work.

Article 26

Undertakings by the applicant 36/

Each application shall contain the following undertakings by an applicant:

(a) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and terms of its contracts with the Authority;

(b) to accept control by the Authority of activities in the Area, as authorized by the Convention and by the rules, regulations and procedures of the Authority;

(c) to provide the Authority with a written assurance that its obligations under the contract will be fulfilled in good faith; and

(d) to comply with the provisions on the transfer of technology set forth in these regulations. 37/

Article 27

Previous contracts with the Authority

1. If the applicant or any of its components has previously been awarded any contract with the Authority, the applicant shall include in its application: 38/

36/ A3/4 (6).

37/ The detailed regulations on the sale of technology will be dealt with in a later set of draft regulations.

38/ A3/4 (2).

/...

(a) the date of the contract;

(b) the date and reference numbers of reports submitted to the Authority in connection with the contract;

(c) the date of termination of the contract, if applicable.

Article 28

Certificate of compliance

An application by a pioneer investor shall include a certificate of compliance with the provisions of resolution II, issued by the Preparatory Commission. [39]

Article 29

Applications for reserved areas

Applications for a reserved area by a State party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by another developing State which is a qualified applicant, or any group of the foregoing, shall include a certificate issued by the Enterprise, confirming that it does not intend to carry out the activities in that area. [40]

Article 30

Total area covered by the application

1. Each application for exploration, other than those submitted by the Enterprise or by other entities for reserved areas, shall contain the co-ordinates of the application area. The applicant shall indicate the co-ordinates dividing the total area into two parts of equal estimated commercial value. [41]

2. The size and shape of the application area shall be determined in accordance with these regulations. [42]

3. No part of the application area shall include an allocated area or an area designated as a reserved area or an environmentally protected area.

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[39] Resolution II, paras. 8 (a) and 11 (a).

[40] A3/9 (4).

[41] A3/8.

[42] A3/17 (2) (a). Regulations will have to be adopted to deal with this issue.

/...

If the proposed plan of work has been submitted or sponsored by a State Party, the aggregate of either part of the application area and (a) any contract area held by the applicant or (b) either part of an application area already proposed by him shall not:

(i) exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the application area; or

(ii) constitute 2 per cent of the total sea-bed area excluding reserved areas and environmentally protected areas. 43/

Article 31

Data on the estimated commercial value

Each application shall contain sufficient data with respect to the applicatio area to enable the Council to determine the estimated commercial value of each part. Such information shall include all data available to the applicant with respect to both parts of the application area, including the data used to determin their commercial value, relating, inter alia, to:

(a) the evaluation of polymetallic nodules, including:

(i) result of testing of equipment; 43 bis/

(ii) mapping of parameters such as sea-bed morphology, bathymetry and nodule population;

(iii) density of polymetallic nodules;

(iv) metal content of polymetallic nodules or chemical analyses;

(b) atmospheric and oceanographic conditions;

(c) the environmental impact of planned activities;

(d) the commercial viability of each part;

(e) an estimate of the accuracy and precision of the data used;

43/ A3/6 (3) (c).

43 bis/ LOS/PCN/WP.16/Rev.1, Rule 7 (d) (i).

/...

(f) an indication by calculation based on standard procedures using the data submitted, that the two mining areas would be expected to deliver at equivalent cost the production requirement specified in the application expressed in terms of metric tonnes of metals to be derived and the metric tonnes of nodules estimated to be recovered for that purpose.

SECTION 3 - PLANS OF WORK

Article 32

Contents of a proposed plan of work for exploration

Each proposed plan of work for exploration shall contain:

(a) a general description of the proposed exploration programme;

(b) an outline of each of the studies to be undertaken and their scheduled completion dates; 44/

(c) a general description of the plant, equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available; 45/

(d) the programme and schedule for the design, construction and testing of plant and equipment;

(e) a schedule of anticipated expenditures and a proposed minimum expenditure commitment for each 12-month period; 46/

(f) the period within which the work is proposed to be completed and the proposed date for the submission of a plan of work for exploitation. 47/

44/ See definition of "exploration" in article 2 (17).

45/ A3/5 (1). Revision of the information on technology and the sale of technology to the Enterprise will be dealt with in a later set of draft regulations.

46/ A3/17 (2) (c).

47/ A3/17 (2) (b) (ii).

Article 33

Contents of a proposed plan of work for exploitation

Each proposed plan of work for exploitation shall contain:

(a) a general description of the proposed mining plan;

(b) a general description of the plant, equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available;

(c) the anticipated construction schedule for the plant, equipment and processing facilities; 48/

(d) the projected date for the commencement of commercial production;

(e) the proposed duration of exploitation, and the factors on which it is based, including the rate of depletion of the polymetallic nodules and the useful life of the plant, equipment and processing facilities.

Article 34

Preference and priority among applicants

An applicant who has an approved plan of work only for exploration shall have a preference and priority among applicants for a plan of work covering exploitation of the same area or resources. Such preference or priority may be withdrawn if its performance has not been satisfactory. 49/

48/ A3/17 (2) (b) (iii).

49/ A3/10.

SECTION 4 - FEES

Article 35

Payment of application fees

1. Each applicant, at the time of submission of its application, shall pay to the Authority $US 500,000 or its equivalent in freely convertible currency, as an application fee for the administrative cost of processing the application for the approval of a plan of work. 50/ A pioneer investor shall, however, pay $US 250,000. 51/

2. The Enterprise shall be exempt from the payment of an application fee for the approval of its plan of work during the initial period required for it to be self-supporting which shall not exceed 10 years from the commencement of commercial production. 52/

3. The amount of the application fee shall be adjusted from time to time by the Council in accordance with the subsidiary rules and procedures so that the amounts specified in this article shall remain the same in constant terms relative to 1982 and to ensure that the fee covers the administrative costs. 53/

4. If the administrative costs incurred by the Authority in processing the application, determined in accordance with the supplementary rules and procedures, are less than the amount of the application fee paid by an applicant, the difference shall be refunded to the applicant. 54/

PART IV - PROCESSING OF APPLICATIONS

SECTION 1 - RECORDING AND TRANSMITTAL OF APPLICATIONS

Article 36

Recording and transmittal of applications

1. Each application shall be recorded by the Secretary-General upon receipt.

2. The record shall contain:

50/ A3/13 (2).

51/ Resolution II, para. 7 (a).

52/ A4/10 (3).

53/ A3/13 (13) and (2) and resolution II, para. 1 (a) (1).

54/ A3/13 (2).

/...

(a) the time and date of receipt of the application;

(b) a list of attachments and annexes thereto;

(c) the name and address of the applicant and of its designated representative; and

(d) the name of each sponsoring State and the date of its ratification of or accession to the Convention. 55/

3. The Secretary-General shall promptly notify the President and members of the Council and the Chairman and members of the Legal and Technical Commission of the receipt of such application.

4. The Secretary-General shall circulate the particulars recorded to all members of the Authority.

Article 37

Acknowledgement of the receipt of the application

The Secretary-General shall promptly acknowledge in writing to the designated representative of the applicant the receipt of the application and the attachments and annexes thereto, specifying the time and date of receipt. 56/

Article 38

Safe custody of the application

The Secretary-General shall place the application and the attachments and annexes thereto in safe custody until required by the Commission or the Council.

Article 39

Confidentiality of data and information

The Authority shall ensure the protection of the confidentiality of data and information in accordance with the applicable subsidiary rules and procedures.

55/ LOS/PCN/WP.16/Rev.1, Rule 10.

56/ LOS/PCN/WP.16/Rev.1, Rule 11.

SECTION 2 - CONSIDERATION OF APPLICATIONS, APPROVAL OF PLANS OF WORK AND EXECUTION OF CONTRACTS

Article 40

Consideration of applications by the Legal and Technical Commission

1. Upon receipt of the notification of an application, the Chairman of the Legal and Technical Commission shall promptly convene a meeting of the Commission.

2. The Legal and Technical Commission shall examine applications in the order in which they are received.

3. The Legal and Technical Commission shall determine whether the applicant has: 57/

(a) complied with the procedures established in these regulations;

(b) given the undertakings and assurances specified in article 26;

(c) the financial and technical capabilities to carry out the proposed plan of work;

(d) properly performed any previous contract with the Authority.

4. If the Legal and Technical Commission finds that an applicant has not complied with these regulations, or that an application is otherwise incomplete or defective, it shall notify the applicant. The applicant may amend and resubmit its application within 45 days of such notification. 58/

5. The Legal and Technical Commission shall determine whether the proposed plan of work ensures, inter alia:

(a) the effective protection of human health and safety; 59/

(b) the protection of the marine environment of the area; 60/

(c) that installations will not interfere with the use of recognized sea lanes essential to international navigation or intense fishing activity. 61/

57/ A3/4 (2) and A3/6 (2).

58/ A3/6 (2) and A3/8.

59/ Article 146.

60/ Article 145 and A3/17 (2) (f).

61/ Article 147, para. 1

/...

6. In reviewing a proposed plan of work, the Legal and Technical Commission shall take into account the policies and objectives relating to activities in the Area as provided for in the Convention. 62/

7. The Legal and Technical Commission shall make its report and recommendation to the Council on the designation and allocation of the areas and on the plan of work within 45 days of the receipt of the data contained in an application, or if an application is amended, within 45 days of the receipt of the data contained in the amendment.

8. The Legal and Technical Commission's report and recommendation may be deferred for a further period of 45 days if the Legal and Technical Commission requests an independent expert to make an assessment.

Article 41

Consideration by the Council of the report and recommendation of the Legal and Technical Commission

1. The Council shall consider the report and recommendation of the Legal and Technical Commission at its next meeting, provided that the members of the Council shall have received copies of the report and recommendations at least 15 days prior to the meeting.

2. Within 60 days thereafter the Council, in accordance with its rules of procedure, shall act upon the report and recommendation of the Legal and Technical Commission. 63/

Article 42

Notification

The Secretary-General shall notify the applicant or its designated representative and the sponsoring State of the decision of the Council.

Article 43

Contracts for plans of work

After the Council has approved a plan of work, the Secretary-General on behalf of the Council shall conclude a contract 64/ with the applicant in accordance with these regulations and the terms and conditions prescribed by the Council.

62/ Article 150 and A3/13 (1).

63/ Article 162, para. 2 (j).

64/ The terms and conditions of a standard contract will have to be elaborated.

Article 44

Notification of contract

The Secretary-General shall notify the members of the Authority of the conclusion of each contract. Such notification shall contain the date of its conclusion, the identity of the contractor and its sponsoring State or States, the co-ordinates of the contract area and the reserved area.

/...

Annex

RELEVANT DRAFT REGULATIONS STRUCTURED TO SHOW THE APPLICATION FOR DESIGNATION AND ALLOCATION OF AREAS AND THE APPLICATION FOR APPROVAL OF A PLAN OF WORK AS TWO SEPARATE PROCESSES

PART III - RULES APPLICABLE TO ALL APPLICATIONS

Article 12

Submission of applications

1. Applications shall be submitted by the applicant's designated representative.

2. Applications by the Enterprise shall be submitted by its Governing Board. [21]

Article 13

Form of applications

1. Applications shall be submitted in the prescribed form and shall be in conformity with the requirements set forth in these regulations.

2. Applications shall be submitted in [ ] copies in one of the languages of the Authority.

3. The original application and each copy shall be signed by the designated representative of the applicant.

SECTION 1 - CONTENT OF THE APPLICATION

Article 14

Identification of the applicant

1. Each application shall contain the name and mail, cable and telex addresses of the applicant and its designated representative.

2. Applications by a state enterprise, or by a natural or juridical person shall contain information on its nationality or control by a State Party or its nationals, or States Parties or their nationals, the name of the sponsoring State or States and, as appropriate, its place of registration and its principal place of business. Applications by a juridical person shall also include a copy of its certificate of registration.

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[21] A4/6 (c).

/...

3. Applications by a group of entities shall contain the required information with respect to each component of the group.

Article 15

Evidence of nationality or control

1. Applications by entities other than States Parties or the Enterprise shall include certificates or other official documentation issued by the sponsoring State or States confirming that:

(a) the applicant is a national of such State or States; or

(b) the applicant is subject to the effective control of such State or States or their nationals. 22/

2. The certificates shall be submitted in the prescribed forms.

3. This article applies mutatis mutandis to entities in a joint arrangement 23/ with the Enterprise.

Article 16

Sponsorship

1. Applications by an entity other than a State Party or the Enterprise, shall be accompanied by a certificate of sponsorship issued by the State Party of which it is a national or by which it is effectively controlled. In the cases of applications submitted by pioneer investors, the certifying State or States shall be deemed to be the sponsoring State or States, provided that the certifying State or States are Parties to the Convention. 24/

2. If an applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State Party, each such State Party shall sponsor the application. 25/

3. If an applicant has the nationality of one State Party or States Parties and is effectively controlled by another State Party or States Parties or by their nationals, all such States Parties shall sponsor the application. 26/

22/ Article 153 (2) (b) and A3/4 (1).

23/ A3/11.

24/ Article 153 (2) (b), A3/4 (1) and (3) and resolution II (8) (b).

25/ A3/4 (3).

26/ Ibid.

4. This article applies mutatis mutandis to entities in a joint arrangement with the Enterprise.

Article 17

Form of the certificate of sponsorship

1. A certificate of sponsorship shall be submitted by each sponsoring State Party in the prescribed form and shall conform to the requirements set forth in these regulations.

2. A certificate shall be submitted in [ ] copies in one of the languages of the Authority.

3. The original certificate and each copy shall be signed by an authorized official of each sponsoring State Party.

Article 18

Content of the certificate of sponsorship

Each certificate of sponsorship shall contain:

(a) the name of the applicant;

(b) the name of the sponsoring State Party;

(c) the date of ratification of or accession to the Convention by the sponsoring State Party;

(d) a statement as to whether the applicant was a registered pioneer investor;

(e) a statement as to whether the sponsoring State Party was a certifying State for the purpose of registration as a pioneer investor;

(f) a declaration that the State Party sponsors the applicant; and

(g) a declaration that the sponsoring State Party assumes responsibility in respect of the application in accordance with article 20 of these regulations.

Article 19

Duration and termination of sponsorship

1. Each applicant shall have the required sponsorship throughout the period of the contract.

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2. If a State Party terminates the sponsorship the Secretary-General shall be notified thereof by the State or States concerned in writing. Termination of sponsorship shall take effect [ ] months after the date of receipt of the notification, unless the notification specifies a later date.

3. In the event of termination of sponsorship the contractor shall within [ ] months obtain another sponsor meeting the requirements prescribed in these regulations.

4. Failure to obtain a sponsor within the required period shall result in the termination of the contract.

Article 20

Responsibility of a sponsoring State

Each sponsoring State shall have the responsibility to ensure, within its legal system, that a contractor sponsored by it shall carry out activities in the area in conformity with the terms of its contract and its obligations under these regulations. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and has taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance with such obligations by persons under its jurisdiction. 27/

Article 21

Responsibility on termination of sponsorship

A sponsoring State shall not be discharged by reason of the termination of its sponsorship from the financial and contractual obligations which accrued while it was a sponsoring State, nor shall such termination affect any right, obligation or legal situation of that State created during its sponsorship. 28/

Article 22

Financial capabilities

1. Each application shall contain sufficient information specific enough to enable the Council to determine whether an applicant is financially capable of carrying out the proposed plan of work and of fulfilling its financial obligations to the Authority. 29/

27/ Article 139 (1) and A3/4 (4).

28/ Article 317, para. 2.

29/ A3/4 (1) and (2) and LOS/PCN/L.11, para. 12.

/...

2. Such information shall include:

(a) an estimate of the costs of the proposed plan of work prepared in accordance with the accounting, rules, regulations and procedures; 30/

(b) a description of the financial plan to pay for such costs;

(c) data on the availability of capital, credit or other financial resources at the disposal of the applicant. 31/

3. (a) An application by the Enterprise shall include confirmation by the Governing Board of the availability of funds to meet such costs;

(b) An application by a State party or a state enterprise shall include a statement by the State party or the sponsoring State party certifying that the applicant has the necessary financial resources to meet such costs; 32/

(c) An application by a natural or juridical person shall include copies of its audited financial statements, including balance sheets and profit and loss statements, for the most recent three years and:

(i) if the applicant is a newly organised entity and an audited balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) if the applicant is controlled by another entity which is to be financially responsible for the proposed plan of work, copies of such financial statements of such other entity;

(iii) if the applicant is controlled by a State Party or state enterprise which is to be financially responsible in whole or in part for the proposed plan of work, the statement referred to in subparagraph (b);

(iv) if the applicant is a group of entities, copies of such financial statements for each component of the group.

(d) If an applicant referred to in subparagraph (c) intends to finance the proposed plan of work in whole or in part by borrowings, its application shall include:

30/ A3/13 (6) (k) refers to "generally recognized accounting principles". It is presumed, however, that the Authority will wish to establish its own accounting principles and procedures which would be used, inter alia, for such projections.

31/ LOS/PCN/L.11, para. 12.

32/ A3/4 (5) and LOS/PCN/L.11, para. 13.

/...

(i) information specifying the sources of such borrowings;

(ii) the anticipated schedule for the repayment of principal and the payment of interest;

(iii) if such borrowings are to be guaranteed by another entity, the most recent audited balance sheet of such entity, or if not relevant, a pro forma balance sheet certified by an appropriate official;

(iv) if such borrowings are to be guaranteed by a sponsoring State Party, a statement by that State Party certifying that the applicant has the necessary financial resources to meet such guarantees.

(e) If the applicant is a group of entities in a joint arrangement, each entity shall provide the information required by this article.

Article 23

Technical capabilities 33/

1. Each application shall contain sufficient information to enable the Council to determine whether an applicant is technically capable of carrying out the proposed plan of work.

2. Such information shall include:

(a) a general description of the applicant's previous experience, if any, relevant to the proposed plan of work;

(b) a general description of the knowledge, skills and expertise relevant to the proposed plan of work, which the applicant possesses or expects to obtain from others;

(c) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work, including environmental monitoring equipment;

(d) the curricula vitae of the persons to be responsible for the conduct of the proposed plan of work.

Article 24

Payment of application fee

1. Each applicant, at the time of submission of its application, shall pay to the Authority $US 500,000 or its equivalent in freely convertible currency, as an

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33/ A3/4 (2) and A3/5 (1).

/...

application fee for the administrative cost of processing both the application for the designation and allocation of an area and the application for the approval of a plan of work. 34/ A pioneer investor shall, however, pay $US 250,000. 35/

2. The Enterprise shall be exempt from the payment of an application fee for the approval of its plan of work during the initial period required for it to be self-supporting which shall not exceed 10 years from the commencement of commercial production. 36/

3. The amount of the application fee shall be adjusted from time to time by the Council in accordance with the supplementary rules and procedures so that the amounts specified in this article shall remain the same in constant terms relative to 1982 and to ensure that the fee covers the administrative costs. 37/

4. If the administrative costs incurred by the Authority in processing the application, determined in accordance with the supplementary rules and procedures, are less than the amount of the application fee paid by an applicant, the difference shall be refunded to the applicant. 38/

34/ A3/13 (2).

35/ Resolution II, para. 7 (a).

36/ A4/10 (3).

37/ A3/13 (13) and (2) and resolution II, para. 1 (a) (1).

38/ A3/13 (2).

/...

SECTION 2 - RECORDING AND TRANSMITTAL OF APPLICATIONS

Article 25

Recording and transmittal of applications

1. Each application shall be recorded by the Secretary-General upon receipt.

2. The record shall contain:

(a) the time and date of receipt of the application;

(b) a list of attachments and annexes thereto;

(c) the name and address of the applicant and of its designated representative; and

(d) the name of each sponsoring State and the date of its ratification of or accession to the Convention. 39/

3. The Secretary-General shall promptly notify the President and members of the Council and the Chairman and members of the Legal and Technical Commission of the receipt of such application.

4. The Secretary-General shall circulate the particulars recorded to all members of the Authority.

Article 26

Acknowledgement of the receipt of the application

The Secretary-General shall promptly acknowledge in writing to the designated representative of the applicant the receipt of the application and the attachments and annexes thereto, specifying the time and date of receipt. 40/

Article 27

Safe custody of the application

The Secretary-General shall place the application and the attachments and annexes thereto in safe custody until required by the Commission or the Council.

39/ LOS/PCN/WP.16/Rev.1, Rule 10.

40/ LOS/PCN/WP.16/Rev.1, Rule 11.

/...

Article 28

Confidentiality of data and information

The Authority shall ensure the protection of the confidentiality of data and information in accordance with the applicable subsidiary rules and procedures.

PART IV - APPLICATIONS FOR ALLOCATION OF AREAS

SECTION 1 - GENERAL

Article 29

Right to apply

States Parties or state enterprises or natural or juridical persons which possess the nationality of States Parties are effectively controlled by them or their nationals, when sponsored by such States or any group of the foregoing which meets the requirements of these regulations have the right to apply to the Authority for the allocation of areas. 41/

Article 30

Time of submission

Application may be submitted at any time.

Article 31

Total area covered by the application

1. Each application shall contain the co-ordinates of the application area. The Applicant shall indicate the co-ordinates dividing the total area into two parts of equal estimated commercial value. 42/

2. The size and shape of the application area shall be determined in accordance with these regulations. 43/

3. No part of the application area shall include an allocated area or an area designated a reserved area or an environmentally protected area.

41/ Article 153, para. 2; A3/3 (1).

42/ A3/8.

43/ A/17/2 (a).

/...

Article 32

Data on the estimated commercial value

Each application shall contain sufficient data with respect to the application area to enable the Council to determine the estimated commercial value of each part. Such information shall include all data available to the applicant with respect to both parts of the application area, including the data used to determine their commercial value, relating, inter alia, to:

(a) The evaluation of polymetallic nodules, including:

(i) result of testing of equipment; 43 bis/

(ii) mapping of parameters such as sea-bed morphology, bathymetry and nodule population;

(iii) density of polymetallic nodules;

(iv) metal content of polymetallic nodules or chemical analyses;

(b) atmospheric and oceanographic conditions;

(c) the environmental impact of planned activities;

(d) the commercial viability of each part;

(e) an estimate of the accuracy and precision of the data used:

(i) an indication, by calculation based on standard procedures using the data submitted, that the two mining areas could be expected to deliver at equivalent cost the production requirement specified in the application expressed in terms of tons of metals to be derived and the tons of nodules estimated to be recovered for that purpose.

SECTION 2 - CONSIDERATION OF APPLICATIONS FOR DESIGNATION AND ALLOCATION OF AREAS

Article 33

Consideration of applications

1. Upon notification of the receipt of an application, the Chairman of the Legal and Technical Commission shall promptly convene a meeting of the Commission.

2. The Legal and Technical Commission shall examine applications in the order in which they are received.

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43 bis/ See definition of exploration in article 2 (17).

/...

3. If the Legal and Technical Commission finds that an applicant has not complied with these regulations or that an application is incomplete or defective, it shall notify the applicant. The applicant may amend and resubmit its application within 45 days of such notification. 44/

4. The Legal and Technical Commission shall make its report and recommendation to the Council within 45 days of the receipt of the data contained in an application, or if an application is amended, within 45 days of the receipt of the data contained in the amendment.

5. The Legal and Technical Commission's report and recommendation may be deferred for a further period of 45 days if the Legal and Technical Commission requests an independent expert to make an assessment. 45/

Article 34

Consideration of the report and recommendation by the Council

1. The Council shall consider the report and recommendation of the Legal and Technical Commission at its next meeting, provided that the members of the Council shall have received copies of the Legal and Technical Commission's report and recommendation at least 15 days prior to the meeting.

2. Within [45] days thereafter, the Council shall, in accordance with its rules of procedure, determine which part of the application area is to be designated as a reserved area and which part is to be the allocated area.

Article 35

Recording of the designation and allocation of areas

1. After a decision has been taken by the Council on the designation and allocation of areas, the Council shall issue to the applicant and send to its designated representative a certificate of its allocation of an area.

2. The Secretary-General shall maintain a register for the purpose of recording the designation and allocation of areas.

44/ A3/6 (2) and 8.

45/ A3/8.

Article 36

Content of the certificate of allocation

A certificate of allocation shall contain:

(a) the identity of the State or entity to which an area has been allocated and its sponsoring State or States;

(b) the co-ordinates delineating the allocated area and its size;

(c) the date of the Council's decision.

Article 37

Notification of designation and allocation of areas

The Secretary-General shall notify the members of the Authority of each designation and allocation of areas. Such notification shall contain the date of the Council's decision, the identity of the State or entity to which an area has been allocated and its sponsoring State or States and the co-ordinates of the area allocated to the entity and of the area designated to be the reserved area.

PART V - APPLICATIONS FOR APPROVAL OF PLANS OF WORK

SECTION 1 - GENERAL

Article 38

Right to apply

The following entities have the right to apply to the Authority for approval of a plan of work either for exploration and exploitation or for exploration or for exploitation:

(a) the Enterprise, on its own behalf or in a joint arrangement;

(b) pioneer investors;

(c) State or entity which has received a certificate of allocation of an area;

(d) State or entity entitled to apply for a reserved area.

Article 39

Time of submission for approval of plans of work

1. Applications by entities which have received a certificate of allocation of an area shall be submitted within six months of the date of the Council's decision to

/...

allocate an area to the applicant. The Council may decide, in accordance with its rules of procedure, to extend this time-limit for a period not exceeding six months.

2. Applications by pioneer investors shall be submitted within six months from the entry into force of the Convention.

3. Applications by the State or entities entitled to apply for a reserved area may be submitted at any time after such an area becomes available following a decision by the Enterprise that it does not intend to carry out activities in that area in accordance with article ___. 46/

Article 40

Changes in information

If there has been a change in the applicant's nationality or control, the applicant shall submit the certificates required by article [15]. If there has been a change in the applicant's sponsorship, the applicant shall submit the certificates required by article [16].

Article 41

Area covered by the proposed plan of work

1. Each application shall contain the co-ordinates of the area covered by the proposed plan of work.

2. If the proposed plan of work has been submitted or sponsored by a State Party, the aggregate of either part of the application area and (a) any contract area held by the applicant or (b) either part of an application area already proposed by him shall not:

(i) exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of a proposed contract area; or

(ii) constitute 2 per cent of the total sea-bed area exclusive of reserved areas and environmentally protected areas. 47/

46/ A3/9 (4).

47/ A3/6 (3) (c).

Article 42

Previous contracts with the Authority

1. If the applicant or any of its components has previously been awarded any contract with the Authority, the applicant shall include in its application: 48/

(a) the date of the contract;

(b) the date and reference numbers of reports submitted to the Authority in connection with the contract;

(c) the date of termination of the contract, if applicable.

Article 43

Certificate of compliance

An application by a pioneer investor shall include a certificate of complianc with the provisions of resolution II, issued by the Preparatory Commission. 49/

Article 44

Applications for reserved areas

Applications for a reserved area by a State party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by i or by another developing State which is a qualified applicant, or any group of the foregoing, shall include a certificate issued by the Enterprise, confirming that i does not intend to carry out the activities in that area. 50/

Article 45

Contents of a proposed plan of work for exploration

Each proposed plan of work for exploration shall contain:

(a) a general description of the proposed exploration programme;

48/ A3/4 (2).

49/ Resolution II, paras. 8 (a) and 11 (a).

50/ A3/9 (4).

/...

(b) an outline of each of the studies to be undertaken and their scheduled completion dates; 51/

(c) a general description of the plant, equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available; 52/

(d) the programme and schedule for the design, construction and testing of plant and equipment;

(e) a schedule of anticipated expenditures and a proposed minimum expenditure commitment for each 12-month period; 53/

(f) the period within which the work is proposed to be completed and the proposed date for the submission of a plan of work for exploitation. 54/

Article 46

Contents of a proposed plan of work for exploitation

Each proposed plan of work for exploitation shall contain:

(a) a general description of the proposed mining plan;

(b) a general description of the plant, equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available;

(c) the anticipated construction schedule for the plant, equipment and processing facilities; 55/

(d) the projected date for the commencement of commercial production;

(e) the proposed duration of exploitation, and the factors on which it is based, including the rate of depletion of the polymetallic nodules and the useful life of the plant, equipment and processing facilities.

51/ See definition of "exploration" in article 2, paragraph 17.

52/ A3/5 (1). Revision of the information on technology and the sale of technology to the Enterprise will be dealt with in a later set of draft regulations.

53/ A3/17 (2) (c).

54/ A3/17 (2) (b) (ii).

55/ A3/17 (2) (b) (iii).

/...

Article 47

Undertakings by the applicant [56]

Each application shall contain the following undertakings by an applicant:

(a) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and terms of its contracts with the Authority;

(b) to accept control by the Authority of activities in the Area, as authorized by the Convention, and by the rules, regulations and procedures of the Authority;

(c) to provide the Authority with a written assurance that its obligations under the contract will be fulfilled in good faith; and

(d) to comply with the provisions on the transfer of technology set forth in these regulations.

SECTION 2 - CONSIDERATION OF APPLICATIONS, APPROVAL OF PLANS OF WORK AND EXECUTION OF CONTRACTS

Article 48

Consideration of applications by the Legal and Technical Commission

1. Upon receipt of the notification of an application, the Chairman of the Legal and Technical Commission shall promptly convene a meeting of the Commission.

2. The Legal and Technical Commission shall examine applications in the order in which they are received.

3. The Legal and Technical Commission shall determine whether the applicant has: [57]

(a) complied with the procedures established in these regulations;

(b) given the undertakings and assurances specified in article 47;

(c) the financial and technical capabilities to carry out the proposed plan of work;

(d) properly performed any previous contract with the Authority.

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[56] A3/4 (6).

[57] A3/4 (2) and A3/6 (2).

4. If the Legal and Technical Commission finds that an applicant has not complied with these regulations, or that an application is otherwise incomplete or defective, it shall notify the applicant. The applicant may amend and resubmit its application within 45 days of such notification. 58/

5. The Legal and Technical Commission shall determine whether the proposed plan of work ensures, inter alia:

(a) the effective protection of human health and safety; 59/

(b) the protection of the marine environment of the area; 60/

(c) that installations will not interfere with the use of recognized sea lanes essential to international navigation or intense fishing activity. 61/

6. In reviewing a proposed plan of work, the Legal and Technical Commission shall take into account the policies and objectives relating to activities in the Area as provided for in the Convention. 62/

7. The Legal and Technical Commission shall make its report and recommendation to the Council on the designation and allocation of the areas and on the plan of work within 45 days of the receipt of the data contained in an application, or if an application is amended, within 45 days of the receipt of the data contained in the amendment.

8. The Legal and Technical Commission's report and recommendation may be deferred for a further period of 45 days if the Legal and Technical Commission requests an independent expert to make an assessment.

Article 49

Consideration by the Council of the report and recommendation of the Legal and Technical Commission

1. The Council shall consider the report and recommendation of the Legal and Technical Commission at its next meeting, provided that the members of the Council shall have received copies of the report and recommendations at least 15 days prior to the meeting.

58/ A3/6 (2) and A3/8.

59/ Article 146.

60/ Article 145 and A3/17 (2) (f).

61/ Article 147, para. 2.

62/ Article 150 and A3/13 (1).

/...

2. Within 60 days thereafter the Council, in accordance with its rules of procedure, shall act upon the report and recommendation of the Legal and Technical Commission. 63/

Article 50

Notification

The Secretary-General shall notify the applicant or its designated representatives and the sponsoring State of the decision of the Council.

Article 51

Contracts for plans of work

After the Council has approved a plan of work the Secretary-General on behalf of the Council shall conclude a contract 64/ with the applicant in accordance with these regulations and the terms and conditions prescribed by the Council.

Article 52

Notification of contract

The Secretary-General shall notify the members of the Authority of the conclusion of each contract. Such notification shall contain the date of its conclusion, the identity of the contractor and its sponsoring State or States, the co-ordinates of the contract area and the reserved area.

63/ Article 162, para. 2 (j).

64/ The terms and conditions of a standard contract will have to be elaborated.

/...

LOS/PCN/SCN.3/WP.6/Rev.1
6 June 1988

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3

II. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

(PARTS I-IV)*

Working paper by the Secretariat as revised by the Chairman

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* Subsequent parts of the draft regulations will be issued as addenda to the present document.

/...

Explanatory note

1. At the end of its informal meetings, held at Geneva from 11 August to 5 September 1984, Special Commission 3 of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea requested the Secretariat to prepare, *inter alia*, draft regulations on the content of applications for approval of plans of work and the procedures relating thereto (see LOS/PCN/L.11). The draft regulations were intended to provide a focus and tool for the deliberations in the Commission; they subsequently appeared in document LOS/PCN/SCN.3/WP.6. It has been the understanding since then that they would be redrafted under the responsibility of the Chairman of Special Commission 3 on the basis of the various comments and proposals made thereon. Working paper 6 was discussed during the third and fourth sessions of the Preparatory Commission, in 1985 and in 1986 (see LOS/PCN/L.16, 26 and 32).

2. It should be recalled that from the outset it has been the understanding that the deep sea-bed mining code will be of a comprehensive nature. This means that users of the code will have only one piece of reference material, i.e. the code, and will therefore have no need to refer to the Convention or to its annexes.

3. Articles in the revised working paper have been renumbered. Numbers between parentheses refer to the article numbers of working paper 6. In certain places reference is made to annexes. Forms to be used by applicants will be reproduced in annex I. Certain articles of the Convention together with annex III thereof will appear in annex II for reference purposes. Under no circumstances will the annexes contain provisions of a substantive nature, which belong only in the code itself.

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PART I

INTRODUCTION

Article 1

Scope of these regulations

These regulations apply to prospecting, exploration and exploitation of polymetallic nodules in the Area.

Article 2

Use of terms

For the purposes of these regulations:

(1) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

(2) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

(3) "area under application" means the total area proposed by an applicant, which need not be a single continuous area and which is sufficiently large and of sufficient estimated commercial value to allow two mining operations;

(4) "Authority" means the International Sea-Bed Authority;

(5) "contractor" means a State or entity which has signed a contract with the authority to carry out activities in the Area;

(6) "Convention" means the United Nations Convention on the Law of the Sea;

(7) "co-ordinates" means a list of the geographical co-ordinates of points in accordance with the World Geodetic System;

(8) "pioneer investor" means any State, State enterprise or natural or juridical person which has been registered as a pioneer investor in accordance with resolution II;

(9) "polymetallic nodules" means one of the resources of the Area consisting of any deposit or accretion of nodules, on or just below the surface of the deep sea-bed, which contain manganese, nickel, cobalt and copper;

(10) "reserved area" means the area reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States;

/...

(11) "resolution II" means resolution II of the Third United Nations Conference on the Law of the Sea;

(12) "resources" means all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the sea-bed, including polymetallic nodules;

(13) "Secretary-General" means the Secretary-General of the Authority;

(14) "sponsoring State" means a State which submits a certificate of sponsorship of an applicant in accordance with article [19] and which assumes responsibilities in accordance with article [21];

(15) "State" means a State Party to the United Nations Convention on the Law of the Sea. The term "State" applies *mutatis mutandis* to an entity entitled to become a party to the Convention in accordance with article 305 of the Convention (see annex II).

/...

PART II

PROSPECTING

SECTION 1. NOTIFICATIONS OF PROSPECTING

Article 3 (3, 4)

Notification to the Authority

1. A proposed prospector shall notify the Authority of its intention to engage in prospecting.

2. Notifications shall be addressed to the Secretary-General.

3. Notifications may be submitted to the Authority at any time.

4. Notifications by the Enterprise shall be submitted by its Governing Board.

5. Notifications by a State shall be submitted by the authority designated for that purpose by it.

6. Notifications by an entity shall be submitted by its designated representative or the authority designated for that purpose by the sponsoring State or States.

Article 4 (5)

Form of notifications

1. Notifications shall be submitted in the prescribed form (see annex I) and shall conform to the requirements set forth in these regulations.

2. Notifications shall be submitted in six copies in one of the languages of the Authority and shall be duly signed.

Article 5 (6)

Content of notifications

Each notification shall contain:

(a) the name, nationality and mail, cable and telex addresses and telephone number(s) of the proposed prospector and its designated representative;

(b) the co-ordinates of the broad area or areas within which prospecting is to be conducted;

(c) a general description of the prospecting programme including the date of commencement and its approximate duration;

(d) a written undertaking to comply with the Convention and the relevant rules, regulations and procedures of the Authority concerning:

(i) co-operation in the training programmes in connection with marine scientific research and transfer of technology as referred to in the Convention (articles 143 and 144);

(ii) protection of the marine environment;

(iii) acceptance of verification by the Authority of compliance therewith.

Article 6 (7, 8)

Acknowledgement of receipt, recording and transmittal of notifications

1. The Secretary-General shall promptly acknowledge in writing to the designated representative of the proposed prospector or to the authority designated for that purpose by the State concerned the receipt of the notification and the attachments and annexes thereto, specifying the time and date of receipt.

2. Each notification shall be recorded by the Secretary-General upon receipt.

3. The record shall contain:

(a) the time and date of receipt of the notification;

(b) a list of attachments and annexes thereto;

(c) the name and address of the proposed prospector and of its designated representative.

4. The Secretary-General -hall promptly notify the President and members of the Council of the receipt of such notification.

5. The Secretary-General shall circulate the particulars recorded to all members of the Authority.

SECTION 2. CONSIDERATION OF NOTIFICATIONS AND COMMENCEMENT OF PROSPECTING

Article 7 (9)

Consideration of notifications

1. Upon acknowledgement of the receipt of a notification by a proposed prospector, the Secretary-General shall promptly consider the notification.

2. The Secretary-General shall inform the proposed prospector within 30 days of receipt of the notification if it includes any part of a designated area or an area for which an application for designation is pending, or if the written undertaking is not satisfactory. The proposed prospector may amend its notification.

3. If the particulars of the notification fulfil the requirements of these regulations and the undertaking is satisfactory, the Secretary-General shall record the notification in the register maintained for that purpose and so inform the President, members of the Council and the prospector within 45 days of the receipt of the notification.

Article 8 (10)

Prospecting

1. Prospecting shall be conducted in accordance with these regulations and may commence only after the prospector has been informed by the Secretary-General that its notification has been recorded pursuant to article 7, paragraph 3.

2. Prospecting shall not confer on the prospector any rights with respect to resources. A prospector may, however, recover a reasonable quantity of minerals to be used for testing.

3. Prospecting may be conducted simultaneously by more than one prospector in the same area or areas.

4. Prospecting shall be without time-limit.

SECTION 3. SUBMISSION OF REPORTS TO THE AUTHORITY

Article 9 (11)

Reports and other information

1. A prospector shall inform the Secretary-General of any change in the information contained in the notification.

2. A prospector shall file an annual report to the Authority within 90 days of the end of each calendar year.

/...

3. The report shall contain:

(a) a general description of the status of prospecting, including data on the amount of polymetallic nodules recovered for the purpose of testing;

(b) information on compliance with the undertaking stipulated in article 5 (d);

(c) observations on any activities affecting safety at sea and accommodation with other marine activities.

4. Reports shall be in one of the languages of the Authority and shall be addressed to the Secretary-General, who shall submit them to the Council.

/...

PART III

APPLICATIONS FOR APPROVAL OF PLANS OF WORK

SECTION 1. GENERAL PROVISIONS

Article 10 (12)

Right to apply

The following entities have the right to apply to the Authority for approval of a plan of work for exploration or exploitation or for exploration and exploitation:

(a) the Enterprise, on its own behalf or in a joint arrangement;

(b) States or State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these regulations.

Article 11 (13)

Time of submission for approval of plans of work

1. Applications may be submitted at any time, except as provided in paragraph 2.

2. Applications by pioneer investors shall be submitted within six months from the entry into force of the Convention.

Article 12 (13)

Time of submission for approval of a plan of work with respect to a reserved area

1. Any developing State or any natural or juridical person sponsored by it and effectively controlled by it or by another developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work with respect to an area which has been reserved for the Enterprise. The Secretary-General shall promptly acknowledge receipt of the notification and promptly forward it to the Enterprise.

2. Applications for a reserved area referred to in paragraph 1 may be submitted at any time after such an area becomes available following a decision by the Enterprise that it does not intend to carry out activities in that area in accordance with the Convention.

/...

3. If the Enterprise has not taken a decision within six months after receipt of the notification, the application shall be considered by the Council.

Article 13 (14)

Submission of applications

1. Applications by the Enterprise shall be submitted by its Governing Board.

2. Applications by a State shall be submitted by the authority designated for that purpose by it.

3. Applications by entities other than States shall be submitted by their designated representatives or the authority designated for that purpose by the sponsoring State or States.

4. Applications shall be submitted to the Authority through the Secretary-General.

Article 14 (15)

Form of applications

1. Applications shall be submitted in the prescribed form (see annex I) and shall be in conformity with the requirements set forth in these regulations.

2. Applications shall be submitted in six copies in one of the languages of the Authority and shall be duly signed.

SECTION 2. CONTENT OF THE APPLICATION

Article 15 (16)

Identification of the applicant

1. Each application shall contain the name and mail, cable and telex addresses and telephone number(s) of the applicant and its designated representative.

2. Applications by a State enterprise or by a natural or juridical person shall contain information on its nationality or control by a State or its nationals, or States or their nationals, the name of the sponsoring State or States and, as appropriate, its place of registration and its principal place of business. Applications by a juridical person shall also include a copy of its certificate of registration.

3. Applications by a partnership or consortium of entities shall contain the required information with respect to each component.

/...

Article 16 (17)

Evidence of nationality or control

1. Applications by entities other than States or the enterprise shall include a certificate or other official documentation issued by the sponsoring State or States confirming that:

(a) the applicant is a national of such State or States; or

(b) the applicant is subject to the effective control of such State or States or their nationals.

2. The certificate shall be submitted in the prescribed form (see annex I).

3. This article applies mutatis mutandis to entities in a joint arrangement with the Enterprise.

Article 17 (18)

Sponsorship

1. Applications by an entity other than a State or the Enterprise shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by which it is effectively controlled. In the case of an application submitted by a pioneer investor, the certifying State or States shall be deemed to be the sponsoring State or States provided that the certifying State or States are Parties to the Convention.

2. If an applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each such State shall sponsor the application.

3. If an applicant has the nationality of one State or States and is effectively controlled by another State or States or by their nationals, all such States shall sponsor the application.

4. This article applies mutatis mutandis to entities in a joint arrangement with the Enterprise.

Article 18 (19)

Form of the certificate of sponsorship

1. A certificate of sponsorship shall be submitted by each sponsoring State in the prescribed form (see annex I) and shall conform to the requirements set forth in these regulations.

/...

2. A certificate shall be submitted in six copies in one of the languages of the Authority and shall be duly signed.

Article 19 (20)

Content of the certificate of sponsorship

Each certificate of sponsorship shall contain:

(a) the name of the applicant;

(b) the name of the sponsoring State;

(c) the date of deposit of the instrument of ratification of, or accession to the Convention by the sponsoring State;

(d) a statement as to whether the applicant is a registered pioneer investor;

(e) a statement as to whether the sponsoring State is a certifying State;

(f) a statement that the State sponsors the applicant; and

(g) a declaration that the sponsoring State assumes responsibility in respect of the application in accordance with article 139 and annex III, article 4, paragraph 4, of the Convention (see annex II) and article 21 of these regulations.

Article 20 (21)

Termination of sponsorship

1. Each applicant shall have the required sponsorship throughout the period of the contract.

2. If a State terminates the sponsorship it shall promptly notify the Secretary-General thereof in writing. Termination of sponsorship shall take effect six months after the date of receipt of the notification, unless the notification specifies another date.

3. In the event of termination of sponsorship the contractor shall within the period referred to in paragraph 2 obtain another sponsor meeting the requirements prescribed in these regulations.

4. Failure to obtain a sponsor within the required period shall result in the termination of the contract.

5. The Secretary-General shall promptly notify States of the termination or change of sponsorship.

/...

Article 21 (22, 23)

Responsibility and liability

1. Responsibility of States and, as appropriate, of international organizations to ensure that activities in the Area shall be carried out in conformity with the Convention and its annexes shall be governed by article 139 of the Convention.

2. Liability of States, international organizations, entities, or contractors for failure to carry out their responsibilities or for damage arising out of wrongful acts or omissions shall be governed by article 139 and annex III, articles 4 and 22, of the Convention (see annex II).

Article 22 (24)

Financial capabilities

1. Each application shall contain specific and sufficient information to enable the Council to ascertain whether an applicant is financially capable of carrying out the proposed plan of work and of fulfilling its financial obligations to the Authority.

2. (a) An application by the Enterprise shall include confirmation by the Governing Board of the availability of funds to meet the estimated costs of the proposed plan of work;

(b) An application by a State or a State enterprise shall include a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet such costs;

(c) An application by an entity shall include copies of its audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years; and

(i) if the applicant is a newly organized entity and an audited balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) if the applicant is a subsidiary of another entity, copies of such financial statements of that entity;

(iii) if the applicant is controlled by a State or State enterprise, a statement from the State or State enterprise that the applicant will have the financial resources to carry out the plan of work;

(iv) if the applicant is a partnership or consortium of entities, copies of such financial statements for each component;

(d) If an applicant referred to in subparagraph (c) intends to finance the

/...

proposed plan of work in whole or in part by borrowings, its application shall include:

(i) a statement specifying the sources of such borrowings;

(ii) the anticipated schedule for the repayment of principal and the payment of interest;

(iii) if such borrowings are to be guaranteed by its parent organisation sponsored by a State, the most recent audited balance sheet of the parent organization or, if not relevant, a pro forma balance sheet certified by an appropriate official;

(iv) if such borrowings are to be guaranteed by a sponsoring State, a statement by that State certifying that the applicant has the necessary financial resources to meet such guarantees;

(e) If the applicant is a partnership or consortium of entities in a joint arrangement, each component shall provide the information required by this article.

Article 23 (25)

Technical capabilities

1. Each application shall contain sufficient information to enable the Council to ascertain whether an applicant is technically capable of carrying out the proposed plan of work.

2. Such information shall include:

(a) a general description of the applicant's previous experience, knowledge, skills and expertise relevant to the proposed plan of work; and

(b) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work and other relevant non-proprietary information about characteristics of such technology and information on where such technology is available.

Article 24 (26)

Undertakings by the applicant

Each application, other than applications submitted by the Enterprise, shall contain the following undertakings by the applicant:

(a) to accept as enforceable and comply with the applicable obligations created by the provisions of part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contracts with the Authority;

/...

(b) to accept control by the Authority of activities in the Area, as authorised by the Convention;

(c) to provide the Authority with a written assurance that its obligations under the contract will be fulfilled in good faith;

(d) to comply with the provisions on the transfer of technology set forth in these regulations.

Article 25 (27)

Previous contracts with the Authority

If the applicant or any of its components has previously been awarded any contract with the Authority, the applicant shall include in its application:

(a) the date of the contract;

(b) the dates of reports submitted to the Authority in connection with the contract;

(c) the date of termination of the contract, if applicable.

Article 26 (28)

Certificate of compliance

An application by a pioneer investor shall be accompanied by a certificate of compliance with the provisions of resolution II, issued by the Preparatory Commission.

Article 27 (30)

Total area covered by the application

1. Each application, other than those submitted by the Enterprise or those referred to in article 22, shall define the boundaries of the area under application in accordance with generally applicable rules* and shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value.

---

* Such as the World Geodetic System.

2. No part of the area under application shall include areas designated as reserved areas or areas disapproved by the Council for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment.

Article 28 (31, 32, 33)

Data and information to be submitted by the applicant before the designation of the site

1. Each application shall contain sufficient data with respect to the area under application to enable the Council to designate a reserved area based on the estimated commercial value of each part. Such information shall include data available to the applicant with respect to both parts of the area under application, including the data used to determine their commercial value, relating to:

(a) the location and evaluation of the polymetallic nodules in the areas, including:

(i) the results of testing of technologies related to the recovery and processing of polymetallic nodules;

(ii) mapping of conditions such as sea-bed topography, bathymetry and bottom currents;

(iii) average density of polymetallic nodules in kg/m^2;

(iv) average elemental content of metals of economic interest based on chemical assays in (dry) weight per cent;

(v) a calculation, based on standard procedures, using the data submitted, that the two areas could be expected to contain metals of equal estimated commercial value expressed as recoverable metal in the mineable areas;

(vi) an estimate of the statistical level of confidence of the data used in the above calculation;

(b) environmental parameters (seasonal and during test period) including wind speed and direction, wave height, period and direction, surface current speed and direction, and ecology.

2. Each application shall contain the information on financial and technical capabilities referred to in articles 22 and 23 and a preliminary estimate of the costs of the proposed plan of work for the area under application.

3. In the case of a plan of work for exploration only, the applicant shall submit, in addition to the data and information referred to in paragraphs 1 and 2, the following:

(a) a general description of the proposed exploration programme;

(b) a general outline of studies to be undertaken in respect of the environmental, technical, economic, commercial and other appropriate factors which must be taken into account in exploitation and their scheduled completion dates; and

(c) the period within which the exploration is proposed to be completed.

4. In the case of a plan of work for exploration and exploitation the applicant shall submit, in addition to the data and information referred to in paragraphs 1, 2 and 3, subparagraphs (b) and (c), the following:

(a) a general description of the proposed exploration and exploitation programme; and

(b) a written undertaking that within the period referred to in paragraph 3, subparagraph (c), he will submit the data and information referred to in article 29, paragraph 2.

5. Failure to comply with paragraph 4, subparagraph (b), of this article could result in the revocation of the contract for exploration and exploitation.

6. On the basis of the data and information submitted by the applicant, if found satisfactory by the Council, it shall designate which part is to be reserved solely for the conduct of activities of the Authority through the Enterprise or in association with developing States or natural or juridical persons sponsored and effectively controlled by them.

Article 29 (32, 33)

Data and information to be submitted by the applicant before final approval of the plan of work

1. After the Council has designated which part of the area is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States, the applicant shall submit, with a view to receiving final approval of the plan of work in the form of a contract, the following:

(a) data and information which enables the Legal and Technical Commission to make the decision which it is required to make in accordance with article 35, paragraph 4, subparagraphs (b), (c) and (d);

(b) a description of the financial plan to pay for the costs of his plan of work;

(c) data on the availability of capital, credit or other financial resources accessible to the applicant;

(d) a schedule of anticipated yearly expenditures;

/...

(e) the skills and capabilities of the project personnel to be responsible for the conduct of the proposed plan of work; and

(f) a practical programme for the training of personnel of the Authority and developing States including the participation of such personnel in the activities in the area covered by the plan of work.

2. In the case of a plan of work for exploitation only for an area for which he has already received an exploration contract the applicant shall submit in addition to the data and information referred to in paragraph 1 the following:

(a) updated data and information referred to in paragraph 2 of article 28;

(b) a description of the proposed exploitation programme;

(c) the programme and schedule for the design, construction and testing of commercial-scale mining and processing systems and their useful life;

(d) the projected date for the commencement of commercial production; and

(e) the expected duration of exploitation and the factors on which it is based, including the rate of depletion of the polymetallic nodules.

3. In the case of a plan of work for exploitation only without having previously applied for an exploration contract for the same area the applicant shall submit, in addition to the data and information referred to in paragraph 1 and paragraph 2, subparagraphs (b)-(e), the following:

(a) data and information referred to in paragraphs 1 and 2 of article 28; and

(b) any additional data and information on which he based his decision to apply for a contract for exploitation only, including any reports on the exploration phase and the acquisition of rights in respect of the area applied for.

4. The Council shall approve the plan of work if it finds satisfactory the data and information submitted by the applicant in accordance with articles 28 and 29.

SECTION 3. FEES

Article 30 (35)

Payment of application fees

1. Each applicant, at the time of submission of its application for the approval of a plan of work for exploration or exploitation, or for exploration and exploitation, shall pay to the Authority $US 500,000 or its equivalent in freely convertible currency, as an application fee for the administrative cost of processing the application. A pioneer investor shall, however, pay $US 250,000.

2. If the actual administrative costs incurred by the Authority in processing the application determined in accordance with its rules and procedures are less than the amount of the application fee paid by an applicant, the difference shall be refunded to the applicant.

3. The amount of the application fee shall be adjusted by the Council in accordance with its rules and procedures so that the amount specified in this article shall remain the same in constant terms relative to the base year and to ensure that the fee covers the administrative costs.

4. The Enterprise shall be exempt from the payment of an application fee for the approval of its plan of work during the initial period required for it to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production.

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PART IV

PROCESSING OF APPLICATIONS

SECTION 1. RECORDING AND TRANSMITTAL OF APPLICATIONS

Article 31 (36)

Recording and transmittal of applications

1. Each application shall be recorded by the Secretary-General upon receipt.

2. The record shall contain:

(a) the time and date of receipt of the application;

(b) a list of attachments and annexes thereto;

(c) the name and address of the applicant and of its designated representative or of the authority designated for that purpose by the State concerned; and

(d) the name of each sponsoring State and the date of deposit of its instrument of ratification of, or accession to the Convention.

3. The Secretary-General shall promptly notify the President and members of the Council and the Chairman and members of the Legal and Technical Commission of the receipt of such application and shall circulate the particulars recorded to all members of the Authority.

Article 32 (37)

Acknowledgement of receipt of the application

The Secretary-General shall promptly acknowledge in writing to the designated representative of the applicant or the authority designated for that purpose by the State concerned, receipt of the application and the attachments and annexes thereto, specifying the time and date of receipt.

Article 33 (38)

Safe custody of the application

The Secretary-General shall place the application and the attachments and annexes thereto in safe custody until required by the Commission or the Council.

Article 34 (39)

Confidentiality of data and information

The Authority shall ensure the protection of the confidentiality of data and information in accordance with the rules for protection of confidentiality.

SECTION 2. CONSIDERATION OF APPLICATIONS FOR APPROVAL OF PLANS OF WORK

Article 35 (40)

Consideration by the Legal and Technical Commission

1. Upon receipt of the notification of an application, the Chairman of the Legal and Technical Commission shall place the consideration of the application on the agenda for the next meeting of the Commission.

2. The Legal and Technical Commission shall examine applications in the order in which they are received.

3. The Legal and Technical Commission shall ascertain whether the applicant:

(a) has complied with the procedures established in these regulations;

(b) has given the undertakings and assurances specified in article 24;

(c) possesses the financial and technical capabilities to carry out the proposed plan of work;

(d) has satisfactorily discharged its obligations under any previous contract with the Authority.

4. The Legal and Technical Commission shall determine whether the proposed plan of work:

(a) is in accordance with the requirements set forth in these regulations;

(b) ensures the effective protection of human health and safety;

(c) ensures the protection of the marine environment of the area;

(d) ensures that installations will not interfere with the use of recognized sea lanes essential to international navigation or intense fishing activity.

5. In discharging its duties described in paragraphs 3 and 4 the Legal and Technical Commission shall apply these regulations in a uniform and non-discriminatory manner.

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6. The Legal and Technical Commission shall not recommend for approval the plan of work if:

(a) part or all of the area covered by the proposed plan of work is included in an approved plan of work or a previously submitted proposed plan of work which has not yet been decided upon by the Council;

(b) the proposed plan of work for exploration and exploitation or for exploitation only of part or all of the area clearly indicates the risk of serious harm to the marine environment; or

(c) the proposed plan of work has been submitted or sponsored by a State which already holds:

(i) plans of work for exploration and exploitation or exploitation only in non-reserved areas that, together with either part of the area covered by the application for a plan of work, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) plans of work for the exploration and exploitation or exploitation only in non-reserved areas which, taken together, constitute 2 per cent of the total sea-bed area which is not reserved or disapproved for exploitation pursuant to subparagraph (b) above.

7. If the Legal and Technical Commission finds that an applicant has not complied with these regulations or that an application is otherwise incomplete or defective, it shall notify the applicant. The applicant may amend its application within 45 days of such notification.

8. In reviewing a proposed plan of work, the Legal and Technical Commission shall take into account the policies and objectives relating to activities in the Area as provided for in article 150 and annex III, article 13, paragraph 1, of the Convention (see annex II).

9. The Legal and Technical Commission shall make its report and recommendation to the Council on the designation of the areas and on the plan of work within 45 days of the receipt of the data contained in an application, or if an application is amended, within 45 days of the receipt of the data contained in the amendment.

10. The Legal and Technical Commission's report and recommendation may be deferred for a further period of 45 days if the Legal and Technical Commission requests an independent expert to assess whether all data required by these regulations have been submitted.

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Article 36 (34)

Priority among applicants

An applicant who has an approved plan of work for exploration only shall have priority among applicants submitting plans of work for exploitation of the same area or resources. Such priority may be withdrawn if the applicant's performance has not been satisfactory.

Article 37 (41)

Consideration by the Council of the report and recommendation of the Legal and Technical Commission

1. The Council shall consider each report and recommendation of the Legal and Technical Commission at its next meeting, provided that the members of the Council shall have received copies of the report and recommendation at least 15 days prior to the meeting.

2. Within 60 days thereafter the Council, in accordance with its rules of procedure, shall decide upon the report and recommendation of the Legal and Technical Commission.

3. The Secretary-General shall, promptly and in writing, notify the applicant or its designated representative or the authority designated for that purpose by the State concerned and each sponsoring State of the decision of the Council.

Article 38 (43)

The contract

1. After a plan of work has been approved by the Council, it shall be concluded in the form of a contract by the Secretary-General and the applicant.

2. The contract shall also include the terms* for transfer of technology and training programmes and provide for, inter alia, security of tenure, accord the applicant the exclusive right to explore, explore and exploit, or exploit only the area covered by the plan of work in respect of a specified category of resources and ensure that no other entity operates in the same area for a different category of resources in a manner which might interfere with the operations of the applicant.

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* The terms and conditions of a standard contract will have to be elaborated.

Article 39 (44)

Notification of contract

The Secretary-General shall notify the members of the Authority of the conclusion of each contract. Such notification shall contain the date of its conclusion, the identity of the contractor and its sponsoring State or States, the co-ordinates of the contract area and the reserved area.

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LOS/PCN/SCN.3/WP.6/Add.1
10 February 1986

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

III. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

Working paper by the Secretariat

EXPLANATORY NOTE

This addendum contains the draft regulations concerning the procedures for application, approval and issuance of production authorizations. They follow in sequential order the draft regulations already submitted in document LOS/PCN/SCN.3/WP.6. The Commission may wish to review the final placement of these regulations in the light of further work on the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

Article 2 (31 bis) 1/

Use of terms

For the purposes of this Part:

"Interim period" means the period that begins five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. If the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period shall be adjusted accordingly.

The duration of the interim period shall be for 25 years or until:

(a) the end of the Review Conference which shall be convened by the Assembly, 15 years from 1 January of the year in which the earliest commercial production commences under an approved plan of work; or

(b) the date when new arrangements or agreements on commodities produced from the minerals derived from the Area in which all interested parties, including both producers and consumers, participate, and to which the Authority is a party, enter into force; 2/

whichever is the earliest.

PART V. PRODUCTION AUTHORIZATIONS 3/

SECTION 1 - GENERAL PROVISION

Article 45

Production authorization for commercial production

During the interim period, commercial production shall not be undertaken pursuant to an approved plan of work until the applicant has applied for, and has been issued, a production authorization by the Authority. 4/

1/ This article would form part of article 2 (use of terms) of document LOS/PCN/SCN.3/WP.6.

2/ Article 151 (3).

3/ The placement of this Part could be reviewed in light of further work on the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

4/ Article 151 (2) (a).

SECTION 2 - SUBMISSION OF APPLICATIONS FOR PRODUCTION AUTHORIZATIONS AND NOTIFICATIONS

Article 46

Right to apply

A contractor who has an approved plan of work for exploration and exploitation or for exploitation only has the right to apply for a production authorisation.

Article 47

Time of submission of applications for production authorizations

1. Applications for production authorizations may not be submitted more than five years prior to the planned commencement of commercial production under the plan of work, unless the Legal and Technical Commission, having regard to the nature and timing of project development, prescribe another period in accordance with its rules, regulations and procedures. [5]

Article 48

Time of submission of notifications by pioneer investors [6]

1. When a pioneer investor intends to commence commercial production within five years, it shall notify the Legal and Technical Commission.

2. If a pioneer investor is unable to begin production within the period of five years from the date of application for production authorization for reasons beyond its control, it shall apply to the Legal and Technical Commission for an extension of time.

3. The Commission shall grant the extension of time for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin commercial production on an economically viable basis at the time originally planned.

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[5] Article 151 (2) (a).

[6] Resolution II, para. 9 (b).

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Article 49

Submission and form of applications

Articles 14 and 15 7/ apply *mutatis mutandis* to the submission and form of applications for production authorizations.

SECTION 3 - CONTENT OF APPLICATIONS FOR PRODUCTION AUTHORIZATIONS

Article 50

Content of applications for production authorizations

Each application for production authorization shall:

(a) specify the date of the planned commencement of commercial production under the approved plan of work;

(b) specify the quantity of nickel expected to be recovered each year under the approved plan of work; 8/

(c) contain information indicating the levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that would be recovered together with the quantity of nickel specified in accordance with subparagraph (b); 9/

(d) include a schedule of expenditures to be made by the applicant for each 12-month period after it has received the production authorization, which are reasonably calculated to allow it to begin commercial production on the date planned. 10/ The application shall state the method of calculation, the assumptions about inflation and other relevant factors incorporated into the schedule;

(e) include any changes in the information previously submitted under article 33. 11/

7/ LOS/PCN/SCN.3/WP.6.

8/ Article 151 (2) (b).

9/ Article 151 (7).

10/ Article 151 (2) (b).

11/ LOS/PCN/SCN.3/WP.6.

SECTION 4 - RECORDING AND TRANSMITTAL OF APPLICATIONS FOR PRODUCTION AUTHORIZATIONS

Article 51

Recording and transmittal of applications

1. Each application for production authorization shall be recorded by the Secretary-General upon receipt. 12/

2. The record shall contain:

(a) the time and date of receipt of the application;

(b) a list of attachments and annexes thereto;

(c) the name and address of the applicant and of its designated representative. 13/

3. The Secretary-General shall promptly notify the Chairman and members of the Legal and Technical Commission of the receipt of such application. 14/

Article 52

Acknowledgement of the receipt of the application 15/

The Secretary-General shall promptly acknowledge in writing to the designated representative of the applicant the receipt of the application for production authorization and the attachments and annexes thereto, specifying the time and date of receipt.

Article 53

Safe custody of the application 16/

The Secretary-General shall place the application for production authorization and the attachments and annexes thereto in safe custody until required by the Legal and Technical Commission.

12/ LOS/PCN/SCN.3/WP.6, article 36 (1).

13/ LOS/PCN/SCN.3/WP.6, article 36 (2).

14/ LOS/PCN/SCN.3/WP.6, article 36 (3).

15/ LOS/PCN/SCN.3/WP.6, article 37.

16/ LOS/PCN/SCN.3/WP.6, article 38.

/...

Article 54

Confidentiality of data and information 17/

The Authority shall ensure the protection of the confidentiality of data and information in accordance with the applicable subsidiary rules and procedures.

SECTION 5 - PRODUCTION CEILING

Article 55

Production ceiling 18/

(a) The production ceiling for any year of the interim period shall be the sum of:

(i) the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year immediately prior to the yuear of the earliest commercial production and the year immediately prior to the commencement of the interim period; and

(ii) sixty per cent of the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year which the production authorization is being applied for and the year immediately prior to the year of the earliest commercial productions.

(b) For the purposes of subparagraph (a):

(i) trend line values used for computing the nickel production ceiling shall be those annual nickel consumption values on a trend line computed during the year in which a production authorization is issued. The trend line shall be derived from a linear regression of the logarithms of actual nickel consumption for the most recent 15-year period for which such data are available, time being the independent variable. This trend line shall be referred to as the original trend line;

(ii) if the annual rate of increase of the original trend line is less than 3 per cent, then the trend line used to determine the quantities referred to in subparagraph (a) shall instead be one passing through the original trend line at the value for the first year of the relevant 15-year period, and increasing at 3 per cent annually; provided however that the production ceiling established for any year of the interim period may not in any case exceed the difference between the original trend line value for that year and the original trend line value for the year immediately prior to the commencement of the interim period.

17/ LOS/PCN/SCN.3/WP.6, article 39.

18/ Article 151 (4).

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Article 56

Calculation of production ceiling

The Legal and Technical Commission shall calculate the nickel production ceiling in accordance with article 55. 19/

SECTION 6 - CONSIDERATION OF APPLICATIONS FOR PRODUCTION AUTHORIZATIONS

Article 57

Consideration of applications by the Legal and Technical Commission

1. Six months after the entry into force of the Convention, and thereafter each fourth month, the Legal and Technical Commission shall take up for consideration any applications for production authorizations submitted during the immediately preceding period. 20/

2. Upon receipt of notification of applications submitted during the immediately preceding period, the Chairman of the Legal and Technical Commission shall convene a meeting of the Commission to consider the applications. 21/

3. Subject to paragraph 4, the Commission shall issue the production authorization for the level of production applied for unless:

(a) the sum of that level and the levels already authorized exceeds the nickel production ceiling as calculated pursuant to article 55 in the year of issuance of authorization, during any year of planned production falling within the interim period, or

(b) the issuance of the production authorization contravenes the obligations of the Authority under a commodity agreement or arrangement to which it has become a party. 22/

4. When more than one application for production authorizations have been submitted during the period immediately preceding any meeting of the Commission and a selection must be made among applicants because of the production limitation set forth in article 55, or because of the obligations of the Authority under a

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19/ Articles 165 (2) and 151 (2-7).

20/ A3/7 (1).

21/ LOS/PCN/SCN.3/WP.6, article 40 (1).

22/ A3/7 (1), article 151 (2) (d).

commodity agreement or arrangement to which it has become a party, the Commission shall submit to the Council the applications together with its recommendations. 23/

Article 58

Selection among applications for production authorizations

1. Upon receipt of such applications and recommendations, the President of the Council shall promptly convene a meeting of the Council. 24/

2. The Council shall make the selection among the applications for production authorization on the basis of objective and non-discriminatory standards set forth in these rules. 25/

Article 59

Priorities and standards for a selection among applicants

1. When a selection must be made among applicants for production authorizations, the Council shall give priority to those applicants which:

(a) give better assurance of performance, taking into account their financial and technical qualifications and their performance, if any, under previously approved plans of work;

(b) provide earlier prospective financial benefits to the Authority, taking into account when commercial production is scheduled to begin;

(c) have already invested the most resources and effort in prospecting or exploration. 26/

2. Applicants which are not selected in any period shall have priority in subsequent periods until they receive a production authorization. 27/

23/ A3/7 (2).

24/ A3/7 (7) and LOS/PCN/SCN.3/WP.6, article 40 (1).

25/ A3/7 (2).

26/ A3/7 (3).

27/ A3/7 (4).

3. In making a selection, the Council shall take into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the Area and to prevent monopolization of those activities. 28/

Article 60

Priority to pioneer investors

1. Pioneer investors who have obtained approval of plans of work for exploration and exploitation shall have priority over all applicants other than the Enterprise in the allocation of production authorization. 29/

2. A pioneer investor who has notified the Legal and Technical Commission that it will commence commercial production within five years may be given a priority over any applicant who has obtained an extension of time pursuant to article 48 (2) and (3). 30/

3. If the Commission, upon being given notice, pursuant to article 48 (1), determines that the commencement of commercial production within five years would exceed the production ceiling calculated in accordance with article 55, the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling. 31/

Article 61

Apportionment amorg pioneer investors

1. If two or more pioneer investors apply for production authorizations to begin commercial production at the same time and article 151, paragraphs 2 to 7, of the Convention, would not permit all such production to commence simultaneously, the Legal and Technical Commission shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves. 32/

28/ A3/7 (5).

29/ Resolution II, para. 9 (a).

30/ *Ibid*., para. 9 (b).

31/ *Ibid*., para. 9 (c).

32/ *Ibid*., para 9 (d).

/...

2. If, pursuant to paragraph 1, the pioneer investors concerned decide not to apportion the available production among themselves they shall agree on an order of priority for production authorizations and all subsequent applications for production authorizations will be granted after those referred to in this paragraph have been approved. 33/

3. If, pursuant to paragraph 1, the pioneer investors concerned decide to apportion the available production among themselves, the Legal and Technical Commission shall issue to each of them a production authorization for such lesser quantity as they have agreed. In each case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will only be granted after the requirements of this paragraph have been met and the applicant is no longer subject to the reduction of production provided for in this paragraph. 34/

4. If the pioneer investors concerned fail to reach agreement within three months of the notification referred to in paragraph 1, they shall submit the matter to binding arbitration in accordance with UNCITRAL Arbitration Rules and in accordance with the criteria set forth in article 59. 35/

Article 62

Priority of the Enterprise

1. The Enterprise shall have priority for production authorizations for two mine sites. The production authorizations shall include the quantity of 38,000 metric tonnes of nickel from the available production ceiling, calculated in accordance with article 55, that the Authority shall reserve to the Enterprise for its initial production. 36/

2. After each of the pioneer investors has obtained production authorization for its first mine site, the Enterprise shall have priority for production in reserved areas, whenever fewer reserved areas than non-reserved areas are under exploitation. 37/

33/ Ibid., para. 9 (e).

34/ Ibid., para 9 (f).

35/ Ibid., paras. 5 (c) and 9 (g).

36/ Ibid., para. 9 (a) and article 151 (5).

37/ Ibid., para. 9 (a) and A3/7 (6).

3. The Enterprise upon notifying the Legal and Technical Commission that it will commence commercial production within five years, may be given a priority over any applicant who has obtained an extension of time pursuant to article 48 (2) and (3). 38/

Article 63

Priority for reserved areas

Whenever fewer reserved areas than non-reserved areas are under exploitation, applications for production authorizations with respect to reserved areas shall have priority. 39/

Article 64

Issuance of production authorizations

1. The Legal and Technical Commission shall issue production authorizations in accordance with these rules within 45 days of the date the Commission or the Council takes up an application for consideration. 40/

2. The Legal and Technical Commission shall issue production authorizations to a pioneer investor within 30 days of the date on which that pioneer investor notifies the Commission that it will commence commercial production within five years. 41/

Article 65

Production authorization as part of approved plan of work

When issued, the production authorization and approved application shall become a part of the approved plan of work. 42/

38/ *Ibid.*, para. 9 (b).

39/ A3/7 (6).

40/ A3/6 (2) (a) and A3/8.

41/ Resolution II, para. 9 (b).

42/ Article 151 (2) (e).

Article 66

Re-application for production authorization

If an application for a production authorization is denied in accordance with these rules, the applicant may apply again at any time. 43/

SECTION 7 - SUPPLEMENTARY PRODUCTION AUTHORIZATIONS

Article 67

Excess of annual production over the level authorized

1. An operator may in any year produce less than or up to 8 per cent more than the level of annual production of minerals from polymetallic nodules specified in his production authorization, provided that the overall amount of production shall not exceed that specified in the authorization. 44/

2. An operator shall report to the Legal and Technical Commission any excess in the level of annual production of minerals from polymetallic nodules specified in his production authorization.

3. Any excess over 8 per cent and up to 20 per cent in any year, or any excess in the first and subsequent years following two consecutive years in which excesses occur, shall be negotiated with the Legal and Technical Commission, which may require the operator to obtain a supplementary production authorization to cover additional production. 45/

Article 68

Application for supplementary production authorizations

1. Sections 2 and 5 of this Part apply *mutatis mutandis* to applications for supplementary production authorizations.

2. Applications for such supplementary production authorizations shall be considered by the Legal and Technical Commission only after all pending applications by applicants who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The

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43/ Article 151 (2) (f).

44/ Article 151 (6) (a).

45/ Article 151 (6) (a).

Commission shall be guided by the principle of not exceeding the total production allowed under the production ceiling in any year of the interim period. It shall not authorize the production under any plan of work of a quantity in excess of 46,500 metric tonnes of nickel per year. 46/

Article 69

The levels of production of other metals

The levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to these rules. 47/

46/ Article 151 (6) (b).

47/ Article 151 (7).

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LOS/PCN/SCN.3/WP.6/Add.2
9 July 1986

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

IV. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

(DRAFT FINANCIAL TERMS OF CONTRACT)

Working paper by the Secretariat

Addendum

Explanatory note

This addendum contains the draft regulations concerning the Financial Terms of Contracts. They follow in sequential order the draft regulations already submitted in documents LOS/PCN/SCN.3/WP.6 and Add.1. The Commission may wish to review the final placement of these regulations in the light of further work on the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area. The issue of financial incentives shall be dealt with in a later set of draft articles. Draft articles will also be prepared on accounting principles to be issued by the International Sea-Bed Authority.

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Article 2

Use of terms 1/

For the purposes of this Part:

(1) "accountants" means the certified independent accountants selected by the contractor in accordance with this Part; 2/

(2) "accounting year" means a calendar year or such other period of 12 months as the Authority and the contractor may agree; 3/

(3) "cash surplus" means in any accounting year the contractor's gross proceeds received in that year, less the contractor's operating costs paid in that year and the payments in that year of the Authority's share of net proceeds; 4/

1/ This article could form part of article 2 (Use of terms) of document LOS/PCN/SCN.3/WP.6.

2/ A3/13 (9) (b).

3/ Flexibility is provided to allow for use of an accounting year that may coincide with one the contractor uses elsewhere, or allow the Authority to use different accounting years for different contractors to spread the administrative burden.

4/ Based on the definition at the end of A3/13 (6) (d) (i). Gross proceeds and operating costs are elsewhere defined on an accrual basis in accordance with generally recognized accounting principles. However, in this definition it is necessary to make clear that only proceeds actually received in the year (irrespective of when the sale accrued) are included, because aggregates used in internal rate of return (IRR) calculation are measured in cash terms. The time cash is paid or received is of crucial importance because of the effect of discounting.

(4) "commencement of commercial production" means the date on which a contractor engages in a sustained large-scale recovery operation which yields a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of equipment or plant; 5/

(5) "development costs" means:

(a) (i) all expenditures incurred by the contractor 6/ prior to the commencement of commercial production that are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, 7/ including, inter alia, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the area covered by the contract, research and development, interest, required leases, licences and fees; 8/ and

(ii) expenditures similar to those set forth in (i) above incurred subsequent to the commencement of commercial production and necessary to carry out the plan of work, except those chargeable to operating costs; 9/

5/ Based on A3/17 (2) (g). The Preparatory Commission may wish to provide numerical specificity to the general terms used in the definition in order to provide desirable predictability and to avoid possible disputes. It could, for instance, consider 70 per cent as a reasonable rate. It could also consider a 25 per cent figure as a reasonable quantity of material sufficient to indicate that the principal purpose is large scale production. If the Preparatory Commission so decides, a possible addition to the definition could be as follows:

> Unless the Authority and the contractor otherwise agree, commercial production shall be deemed to have begun on the date that the contractor recovers polymetallic nodules from the area covered by the contract at a rate equal to 70 per cent of the initial design capacity of the project, equipment, or plant for a period of 30 consecutive days, or when the cumulative production of processed metals produced from the polymetallic nodules recovered from the area covered by the contract first equals 25 per cent of the maximum quantity permitted under the contract, whichever occurs first.

6/ Based on A3/13 (6) (h).

7/ It should be noted that, to avoid needless repetition, the phrase "in conformity with generally recognized accounting principles" has been omitted from all the relevant provisions of this Part. The term is found in Article 83 (3), which applies to all provisions of this Part.

8/ A3/13 (6) (h) (i).

9/ A3/13 (6) (h) (ii).

(b) except that:

(i) if the contractor engages in mining only, expenditures set forth in (a) (i) and (ii) above are limited to those that are directly related to the mining of the resources of the area covered by the contract; 10/ and

(ii) such costs shall not include any costs for the production of metals in a form other than processed metals; 11/

(6) "development costs of the mining sector" 12/ means the portion of the contractor's development costs that is directly related to the mining of the resources of the area covered by the contract, including, inter alia, application fee, annual fixed fee and, where applicable, costs of prospecting and exploration of the area covered by the contract, and that portion of research and development costs directly related to prospecting, exploration and mining of the resources of the area;

(7) "gross proceeds" means:

(a) (i) if the contractor engages in mining, transporting polymetallic nodules and production of processed metals, the gross revenues from the sale of the processed metals and any other monies deemed reasonably attributable to operations under the contract in accordance with the subsidiary rules and procedures of the Authority; 13/

(ii) if the contractor engages in mining only, the gross revenues from the sale of the polymetallic nodules, and any other monies deemed reasonably attributable to the operations under the contract in accordance with the subsidiary rules and procedures of the Authority; 14/

10/ A3/13 (6) (n) (iv).

11/ This provision makes it clear that a contractor cannot claim costs to a stage beyond that required to produce processed metals, a defined term in A3/13 (7) (a) because, under this Part, only sales revenues from processed metals, and not revenues from later stages of production, are taken into account.

12/ Based in part on A3/13 (6) (l). It was thought helpful to explain that the "portion" of the research and development costs referred to in the text relates to prospecting and exploration as well as mining, and thus is meant to cover prospecting and exploration stages as well as mining.

13/ A3/13 (6) (g) (i).

14/ A3/13 (6) (n) (iii).

(iii) in all other cases:

> the gross revenues from the sale of the semi-processed metals from the polymetallic nodules recovered from the area covered by the contract, and any other monies deemed reasonably attributable to operations under the contract in accordance with the subsidiary rules and procedures of the Authority; 15/ 16/ 17/

(b) the proceeds from the disposal of any capital assets previously included in contractor's development costs, and the market value of any such capital assets as determined by the Authority that are no longer required for operations in that they are disposed of by the contractor or kept by the contractor without being used for a period of one year, and that are not sold, to the extent such proceeds received and the market value for any financial year exceed the contractor's development costs for that accounting year; 18/

15/ A3/13 (6) (g) (ii).

16/ The Preparatory Commission may wish to provide specificity to the general term "monies" used in the definition. If it so decides, it may consider giving examples of other monies which would reasonably be attributable to operations under the contract. In that case the following wording can be added:

(a) monies received by the contractor from the sale of any technology, to the extent the cost of which has been charged to operations under the approved plan of work;

(b) monies received for use of infrastructure, personnel or equipment, to the extent the cost of which has been charged to operations under the approved plan of work.

17/ The Preparatory Commission may wish to consider the following as an alternative draft to make it clear that, under 13 (6) (g) (i) and (ii) and (6) (n) (iii), "gross proceeds" includes for a contractor producing processed metals, gross revenues from the sale of semi-processed metals and polymetallic nodules, as well as processed metals (and for a contractor producing semi-processed metals, includes gross revenues from the sale of polymetallic nodules as well as semi-processed metals); and to avoid repetition:

> "gross proceeds" means in any accounting year the gross revenues received by the contractor from the sale of polymetallic nodules, semi-processed metals or processed metals from the polymetallic nodules recovered from the area covered by the contract and any other monies deemed reasonably attributable to operations under the contract in accordance with the provisions of this Part.

18/ Based on A3/13 (6) (i), the last sentence of which requires that the excess be added to the contractor's gross proceeds, with minor adjustments to make the sub-paragraph more precise.

(8) "index" means the United States Wholesale Price Index as reported in International Financial Statistics published monthly by the International Monetary Fund; 19/

(9) "market value of the processed metals" means the product of the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract and the average price for those metals during the relevant accounting year determined in accordance with article 7; 20/

(10) "net operating losses" means in any accounting year the contractor's gross proceeds, less the contractor's operating costs, and less the contractor's recovery of development costs, if the result is negative; 21/

(11) "net proceeds" means in any accounting year the contractor's gross proceeds, less the contractor's operating costs, and less the recovery of contractor's development costs, if the result is positive; 22/

(12) "operating costs" means all expenditures incurred by the contractor 23/ after the commencement of commercial production in the operation of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, including, *inter alia*, the annual fixed fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transporting, processing and marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to operations under the contract, and any net operating losses carried forward or backward, except that:

19/ Consistent with objective 1 (c) of A3/13, which seeks to ensure equality of financial treatment, all calculations should be in one common currency. Exchange rate changes will otherwise distort comparative financial performance. The United States dollar was chosen as fees in A3/13 (2) and (3) and the minimum expenditure requirements in resolution II, paragraph 1 (a) (i) are fixed in United States dollars and it is the currency in which most goods are primarily quoted and metals traded on international markets. Since A3/13 (13) requires adjustments for inflation, the United States Wholesale Price Index was used as it measures a broader category of goods than most other indexes.

20/ A3/13 (5) (b). It should be noted that the word "extracted" was used in this sub-paragraph of the text, but that "recovered" is the more usual term (see, for example, A3/13 (5) (a), 6 (a) and (b) and 7 (b)).

21/ Not defined in A/3/13 but is simply the contractor's net proceeds if it is a negative amount.

22/ Based on A/3/13 (6) (f).

23/ Based on A3/13 (6) (k).

/...

(a) if the contractor engages in mining only, "operating costs" means such expenditures that are directly related to the mining of the resources of the area covered by the contract; 24/

(b) such costs shall not include any costs for the production and sale of metals in a form other than processed metals; 25/

(c) net operating losses may be carried forward for two consecutive accounting years except in the last two accounting years of the contract, in which case they may be carried backward to the two preceding years; 26/

(13) "processed metals" means the metals in the most basic form in which they are customarily traded on international terminal markets specified in the subsidiary rules and procedures of the Authority. For the metals that are not traded on such markets, "processed metals" means the metals in the most basic form in which they are customarily traded in representative arms length transactions; 27/

(14) "return on investment" 28/ means in any accounting year the ratio of attributable net proceeds in that year plus any interest included therein to the development costs of the mining sector as at the end of the preceding accounting year, less any interest included therein. For the purpose of computing this ratio, the development costs of the mining sector shall include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced, 29/ except that, if the contractor engages in mining only, "return on investment" means the ratio of the contractor's net proceeds in that year plus any interest included therein to the contractor's development costs as at the end of

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24/ A3/13 (6) (n) (v).

25/ Included for the same reason as explained in note 11.

26/ Based on A3/13 (6) (k).

27/ A3/13 (7).

28/ The Preparatory Commission may wish to note a potential double count in the drafting of annex III and thus in these regulations. For example, assume five years after production commences a replacement machine is purchased, and the old one sold. The definition of return on investment requires that development costs be reduced by the original cost of the equipment replaced, yet A3/13 (6) (m) requires that the proceeds be deducted from the sale of the asset. This is unfair to the contractor: it would be better to deduct the greater of the original cost, the proceeds from sale, or the imputed market value of the asset.

29/ A3/13 (6) (m) and (n) (vi), with an adjustment to make clear the period to which it refers and to exclude interest. Interest is not treated as a cost in the calculation of return on investment because it is a return on the loan funds that finance development costs.

/...

the preceding accounting year, less any interest included therein. For the purpose of computing this ratio, the contractor's development costs shall include expenditures on new or replacement equipment less the original costs of the equipment replaced. 30/

PART VI - FINANCIAL TERMS OF CONTRACTS

Article 70

Scope of this Part

This Part applies to contracts for exploration and exploitation of polymetallic nodules in the Area. 31/

Article 71

Annual fixed fee

1. Each contractor shall pay to the Authority an annual fixed fee of $US 1 million from the date of entry into force of the contract. 32/

2. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater. 33/

3. The first payment of the annual fixed fee shall be made pro rata to the balance of the calendar year then remaining after the date of entry into force of the contract. 34/

4. Each subsequent payment of the annual fixed fee shall be made on or before 1 January of each subsequent year. 35/

5. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with Part V, the annual fixed fee shall be waived for the period of postponement.

30/ Based on A3/13 (6) (n) (iv).

31/ A3/13 (1).

32/ A3/13 (3).

33/ A3/13 (3). See article 76 for the mechanism.

34/ It seems equitable to make the first payment pro rata.

35/ Date chosen for administrative convenience.

/...

Payment of the annual fixed fee shall be made when the production authorization is issued, pro rata to the balance of the calendar year then remaining. 36/

6. If, during a calendar year in which a contractor has paid the annual fixed fee, there was a period of postponement, the Authority shall refund at the end of that year an amount of the fixed fee pro rata to the period of postponement during that year. 37/

7. The annual fixed fee shall be adjusted annually by the Authority in accordance with the change in the index for each 12-month period ended 30 September from the 1982 base year. The Authority shall notify each contractor of such adjustment on or before 1 December, which shall be effective as of 1 January of the subsequent year. 38/

Article 72

Choice of financial contribution

1. Within a year from the commencement of commercial production, a contractor shall choose to make its financial contribution to the Authority by either:

(a) paying a production charge only; or

(b) paying a combination of a production charge and a share of net proceeds. 39/

2. A contractor shall notify the Authority of its choice in writing.

3. The contractor's choice shall not be changed without the prior written approval of the Authority. 40/

36/ Based on A3/13 (3).

37/ The pro rata provision is equitable and follows from payment at the beginning of each year.

38/ Based on A3/13 (13). Provides a mechanism for the indexation adjustment. 1982 was chosen as the base year in accordance with resolution II, paragraph 1 (a) (i), where that year is identified as the base year for indexation of expenditures in pioneer activities. The 30 September date was chosen for administrative convenience to give the Authority sufficient time to notify the contractor of the adjustment before the fee is next payable.

39/ A3/13 (4).

40/ This provision is necessary to avoid the possibility of the contractor switching between the two systems so as to pay the lower fiscal charge in a given year, which would be contrary to the idea of requiring that a choice be made in the first place. See document NG2/10/Rev.1 (1978), Official Records of the Third United Nations Conference on the Law of the Sea, vol. X, p. 145.

/...

Article 73

Production charge [41]

1. If a contractor chooses to make its financial contribution to the Authority by paying a production charge only, the charge shall be fixed at a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:

(a) 5 per cent for the first 10 years after the commencement of commercial production; and

(b) 12 per cent thereafter to the end of commercial production. [42]

2. If a contractor chooses to make its financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, the production charge shall be a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract fixed as follows:

(a) 2 per cent for the first period of commercial production; and

(b) 4 per cent for the second period of commercial production.

If, in the second period of commercial production, the return on investment in any accounting year falls below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year. [43]

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[41] In structuring this Part, all matters relevant to the production charge are dealt with first, as production charges will be paid by all contractors, though the percentage will vary depending upon which of the two régimes is chosen. All other matters relating to production charges are the same under both régimes. Matters relevant to the share of net proceeds régime are brought together later so that the provisions relating to the two fiscal régimes are separated.

[42] A3/13 (5) (a).

[43] A3/13 (6) (a). It may be noted that this paragraph could have anomalous results. First, the contractor's return by reason of the reduction could exceed 15 per cent. Second, the provision could be discriminatory. For example, assume contractor A has a return of 12 per cent after payment of a 4 per cent production charge. Assume further that its return would have been 14 per cent if it paid a 2 per cent production charge. Under this paragraph, contractor A would not be entitled to a reduction of the production charge. Now assume contractor B would earn a return of 14 per cent after payment of the 4 per cent production charge. According to the paragraph, the production charge should then be reduced to 2 per cent. This could cause contractor B's return to go up to 16 per cent. Consequently contractor A, without the reduction, would earn much less than contractor B with the reduction.

Article 74

Quantity of processed metals

The Authority shall determine the quantity of processed metals produced from the polymetallic nodules recovered from the area covered by the contract by the contractor during the relevant accounting year. If the Authority cannot make that determination, the quantity shall be determined on the basis of the metal content of the nodules, processing recovery efficiency and other relevant factors in accordance with the subsidiary rules and procedures of the Authority and in conformity with generally recognized accounting principles. 44/

Article 75

Average price

If an international terminal market provides a representative pricing mechanism for processed metals, polymetallic nodules and semi-processed metals from the nodules, the average price on that market shall be used. In all other cases, the Authority shall, after consulting the contractor, determine a fair price for the said products in accordance with article 83. 45/

Article 76

Notification of market value and payment of production charge

1. After the contractor notifies the Authority of its choice under article 72, the contractor shall make payment of the production charge on the market value of the processed metals notified by the Authority for each half year, less the amount of the annual fixed fee paid for that calendar year, within 14 days. 46/

2. The Authority shall notify the contractor of the market value of the processed metals produced during each half of the year from the polymetallic nodules recovered from the area covered by the contract within 30 days after the end of each half of the year. 47/

3. The Authority shall notify the contractor of the market value of the processed metals produced during each calendar year from the polymetallic nodules recovered from the area covered by the contract within 30 days after the end of each calendar year. 47/

44/ A3/13 (7) (b). Determinations of quantity are not included in the generally recognized accounting principles embodied in article 83.

45/ A3/13 (8).

46/ This provides a mechanism to implement the last sentence of A3/13 (3) on which this paragraph is based. This paragraph applies to the first year as well as to all subsequent years.

47/ A3/13 (7) and (8).

/...

4. The contractor shall make payment of the production charges on the market value of the processed metals so notified for the year, less the payments theretofore made by the contractor, within seven days. In the event of over-payment of the production charges for such year, the Authority shall refund the over-payment within 14 days. 48/

Article 77

Authority's share of attributable net proceeds

If a contractor chooses to make its financial contributions to the Authority by paying a combination of a production charge and a share of net proceeds, the contractor shall pay the Authority's share of attributable net proceeds determined in accordance with the following incremental schedule: 49/

Portion of attributable net proceeds	Share of the Authority	
	First period of commercial production	Second period of commercial production
That portion representing a return on investment which is greater than 0 per cent but less than 10 per cent	35 per cent	40 per cent
That portion representing a return on investment which is 10 per cent or greater but less than 20 per cent	42.5 per cent	50 per cent
That portion representing a return on investment which is 20 per cent or greater	50 per cent	70 per cent

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48/ These paragraphs provide a mechanism based on quarterly payments for implementing Article 73. A monthly or quarterly payment procedure is most often found in national mining legislation.

49/ A3/13 (6) (c) (ii).

Article 78

Determination of the first and second periods of commercial production

1. The first period of commercial production shall commence in the first accounting year of commercial production and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by its cash surplus, as follows: 50/

(a) in the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less the cash surplus in that year;

(b) in each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs at the end of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum and the percentage change in the index from the end of the preceding calendar year, 51/ plus development costs incurred in the current year and less the cash surplus in the current accounting year; 52/

(c) development costs in any accounting year shall be those paid in that year less the proceeds received in that year 53/ from the disposal of any assets that are not included in contractor's gross proceeds;

(d) interest shall be excluded from both contractor's operating costs included in cash surplus and development costs; 54/

(e) the accounting year in which unrecovered development costs became zero for the first time shall be the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by its cash surplus. 55/

2. The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract. 56/

50/ A3/13 (6) (d) (i).

51/ This phrase provides the mechanism for indexation required under A3/13 (13).

52/ A3/13 (6) (d) (i).

53/ To make clear that it is on a cash received basis and not on an accrued basis.

54/ Interest is excluded for the reasons already explained in note 29.

55/ A3/13 (6) (d) (i).

56/ A3/13 (6) (d) (ii).

Article 79

Determination of attributable net proceeds

In any accounting year, attributable net proceeds 57/ shall be the product of the contractor's net proceeds and the ratio as at the end of the preceeding accounting year of the contractor's development costs in the mining sector to the contractor's development costs, except that:

(a) if the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds for the year shall not be less than 25 per cent of the contractor's net proceeds; 58/

(b) if the contractor engages in mining only, attributable net proceeds shall be the whole of the contractor's net proceeds; 59/

(c) in all other cases, including those where the contractor engages in mining, transporting polymetallic nodules and production primarily of four processed metals, namely cobalt, copper, manganese and nickel, the Authority may, in its subsidiary rules and procedures, prescribe appropriate floors that shall bear the same relationship to each case as the 25 per cent floor does to the three-metal case. 60/ 61/

57/ The first sentence of the definition in A3/13 (6) (e) requires expansion because the ratio of development costs in the mining sector to total development costs needs to be calculated at a specific time. The development costs used are those incurred immediately before the accounting year, which therefore fully contribute to the generation of the net proceeds.

58/ In A3/13 (6) (e), second sentence.

59/ Uses the same words as A3/13 (6) (n) (i).

60/ In A3/13 (6) (e), last sentence.

61/ Consideration may be given to inserting an additional paragraph in order to provide useful flexibility. For example, it may be difficult to determine the ratio precisely. A provision such as the following could provide a way of avoiding a dispute on the issue, or unnecessary waste of time by the contractor and the Authority in yearly reviews of development costs, which may in fact change little after production commences:

> The Authority and the contractor may agree on a ratio of development costs in the mining sector to the contractor's development costs for the term of the contract or for a shorter period.

Article 80

Interest

In any accounting year or part thereof, any interest paid by the contractor in respect of the contractor's development costs, development costs of the mining sector and the contractor's operating costs shall be allowed to the extent that in all the circumstances the Authority approves the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice. 62/

Article 81

Recovery of contractor's development costs

The contractor's development costs incurred prior to the commencement of commercial production shall be recovered in 10 equal annual installments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production shall be recovered in 10 or fewer equal annual installments so as to ensure their complete recovery by the end of the contract. 63/

Article 82

Calculation and payment of the Authority's share of attributable net proceeds

1. All calculations to determine attributable net proceeds shall be made in United States dollars. Transactions made in other currencies shall be converted to United States dollars at the average of the buying and selling rates quoted for the day by the International Monetary Fund when payment is made. 64/

2. In calculating return on investment and attributable net proceeds, a contractor's development costs or development costs of the mining sector shall, at the end of any accounting year, be the contractor's development costs or development costs of the mining sector in the accounting year in which such costs were incurred, multiplied by the change in the index from the middle of the accounting year in which such costs were incurred to the middle of the current accounting year. 65/

62/ Based on A3/13 (6) (o).

63/ Based on A3/13 (6) (j).

64/ See note 19.

65/ A3/13 (13). Escalation is mid-year to mid-year as development expenditure and net proceeds will be incurred and earned in the course of the full year, and the mid-year adjustment provides an equitable mechanism.

3. Each contractor shall make interim payments of the Authority's share of attributable net proceeds within 30 days after the end of each of the first three quarters in the accounting year of an amount equal to 25 per cent of the Authority's share of the attributable net proceeds the previous year as determined by the Authority or, in the absence of such a determination, as calculated and paid by the contractor. In the accounting year in which the commencement of commercial production occurs, the contractor shall pay amounts equal to 25 per cent of the contractor's estimated payment for that year. In the accounting year following that year, such quarterly payments shall be equal to 25 per cent of the Authority's share of the attributable net proceeds the previous year pro rata to the balance of the previous year remaining after the commencement of commercial production. 66/

4. Within 90 days after the end of each accounting year, the contractor shall submit to the Authority its calculation of the Authority's share of attributable net proceeds for that year and certify that the calculation is in compliance with these regulations and the subsidiary rules and procedures of the Authority. At that time, the contractor shall make payment of the amount so calculated less the interim payment already made for that year. 67/

5. Each contractor shall make available to the accountants such financial data as are required to determine that the calculation is in compliance with these regulations. 68/

6. The accountants shall verify such compliance and report to the Authority within 60 days after the date of the contractor's submission. 69/

7. The Authority shall then make its determination of the Authority's share of attributable net proceeds for the relevant year. If such determination is more than the amount paid by the contractor for that year, the contractor shall pay the difference to the Authority with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date the contractor's submission was due. If such determination is less than the amount paid by the contractor, the Authority shall

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66/ This paragraph allows for regular payments of the share of net proceeds on a phased basis. The mechanism chosen is simple and avoids the need for quarterly assessments of earnings, which can be time-consuming. It requires, however, special provisions in the first two years of production.

67/ The system is, in the first instance, self-assessing. The contractor is given 90 days within which to submit the calculation and, to avoid further delay, payment is then made on the contractor's assessment.

68/ Based on A3/13 (10). In this connection, consideration could be given to providing in the subsidiary rules and procedures of the Authority a requirement that the contractor identify to the accountants all costs and expenditures and all determinations of prices and revenues that are not a result of free market transactions.

69/ Under A3/13 (10) the accountants determine compliance. This provision establishes a procedure for reporting to the Authority.

pay the difference to the contractor with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date when the contractor's submission and over-payment was made. 70/

Article 83

Accounting principles

1. All costs, expenditures, proceeds and revenues and all determinations of prices and values referred to in this Part shall be the result of free market or arm's length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the contractor, as though they were the result of free market or arm's length transactions, taking into account relevant transactions in other markets. 71/

2. The Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations. 72/

3. All costs, expenditures, proceeds and revenues and all prices and values referred to in these regulations shall be determined in accordance with generally recognized accounting principles and the subsidiary rules and procedures of the Authority. 73/

70/ A final determination is made in arrears, after a 90-day period, for the contractor to submit its calculation under paragraph 4, and a 60 day period for verification under paragraph 6. It would, therefore, appear appropriate for the Authority to pay interest on any overpayment, and conversely for the contractor to pay interest on any underpayment. The London Inter-Bank Offering Rate plus 1 per cent has been chosen as a widely used reference in these circumstances, representing the use of money factor.

71/ A3/13 (9) (a).

72/ A3/13 (9) (b). It is understood that the Commission and the Group are still working on this matter.

"Arm's length transaction" means a transaction on the basis of prices and other terms and conditions that would have applied in a normal commercial manner if one of the parties to the transaction had not been a person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with, the contractor, or if the parties were not in any special relationship.

73/ Based on A3/13 (11).

Article 84

Payment to the Authority

1. Payments to the Authority under articles 73 and 77 shall be made in freely usable currencies or currencies that are freely available and effectively usable on the major foreign exchange markets or, at the contractor's option, in the equivalents of processed metals at market value. The freely usable currencies and currencies that are freely available and effectively usable on the major foreign exchange markets shall be defined in the subsidiary rules and procedures of the Authority in accordance with prevailing international monetary practice. 74/

2. If the contractor chooses to make payment in the equivalents of processed metals, it shall notify the Authority not later than 90 days before the end of an accounting year. 75/

3. The Authority shall then notify the contractor of the quantities of equivalents of processed metals to be delivered each half year based on market values determined in accordance with these regulations and the subsidiary rules and procedures of the Authority. 76/

Article 85

Selection of accountants 77/

1. The Authority shall maintain a list of at least 5 but not more than 10 certified independent accountants for the purpose of carrying out auditing in compliance with this Part and the subsidiary rules and procedures.

2. A contractor shall select its accountants from such a list pursuant to this Part or may select other such accountants acceptable to the Authority; provided that no accountants shall be eligible for selection if they have provided services to that contractor or its affiliates during the three calendar years prior to the date of selection.

74/ A3/13 (12).

75/ The Authority will need adequate notice if the contractor intends to pay in metals as it will have to make timely marketing arrangements to sell the metal to obtain its cash. The question of the cost of transportation may need to be clarified.

76/ Metal prices are either based on a representative terminal market or determined by the Authority under A3/13 (8). Hence the Authority should determine the equivalents of metal under A3/13 (12).

77/ A3/13 (9) (b) requires the Authority to specify the "means" of selection. Accordingly, this mechanism is provided.

3. A contractor shall notify the Authority of its selection within 30 days from the commencement of commercial production.

4. Accountants selected by a contractor shall agree to refrain from otherwise providing services to that contractor or its affiliates for a period of three calendar years following the date on which it ceases to act as accountants pursuant to this Part.

5. A contractor may change its selection after not less than three months notice to the Authority, which notice shall specify the reasons for such change.

6. If accountants cease to be listed by the Authority, the Authority shall so notify each contractor that selected those accountants, and each such contractor shall select other accountants, as provided in this article, not more than three months after the date of such notice.

7. The remuneration and expenses of the accountants selected by a contractor shall be paid by the Authority.

Article 86

Annual fixed fee to be paid by pioneer investors

Every registered pioneer investor shall pay an annual fixed fee of $US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of its plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this article. 78/

Article 87

Settlement of disputes

In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2, of the Convention. 79/

78/ Resolution II, paragraph 7 (b).

79/ A3/13 (15). Alternatively, this provision could be part of a wider generally applicable regulation or placed in the terms of the contract. This article may be grouped together with other articles dealing with the settlement of disputes.

LOS/PCN/SCN.3/WP.6/Add.2/Corr.1
24 July 1986

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RUSSIAN AND SPANISH ONLY

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

V. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

(DRAFT FINANCIAL TERMS OF CONTRACT)

Working paper by the Secretariat

Corrigendum

1. Page 11, article 76, paragraph 1, line 3

For each half year, read each calendar quarter,

2. Page 11, article 76, paragraph 2

For the existing text substitute

2. The Authority shall notify the contractor of the market value of the processed metals produced during each of the first three calendar quarters of each year from the polymetallic nodules recovered from the area covered by the contract, within 30 days after the end of each such calendar quarter. 47/

3. Page 12, article 76, paragraph 4, line 3

For within seven days, read within 14 days.

4. Page 13, footnote 52

After A3/13 (6) (d) (i), insert

In order to avoid possible double counting of operating losses that have already been included in the definition of the term "net operating losses",

/...

the Commission may wish to consider adding the phrase at the end of subparagraph (b): "less any net operating losses carried forward or backward".

5. Page 18, article 84, paragraph 2, line 2

For 90 days before the end of read 90 days before the beginning of

LOS/PCN/SCN.3/WP.6/Add.2/Rev.1
25 May 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

VI. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum*

PART VI

A. DRAFT FINANCIAL TERMS OF CONTRACT

B. DRAFT REGULATIONS ON FINANCIAL INCENTIVES

Working paper by the Secretariat as revised by the Chairman

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* The present revision incorporates the text of articles 88 and 89 on financial incentives contained in LOS/PCN/SCN.3/WP.6/Add.3.

Explanatory note

1. At the end of its informal meetings, held during its second session in 1984, Special Commission 3 of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea requested the Secretariat to prepare, inter alia, draft regulations on the content of applications for approval of plans of work and the procedures relating thereto (see LOS/PCN/L.11). The draft regulations were intended to provide a focus and tool for the deliberations in the Commission; the first part of them subsequently appeared in document LOS/PCN/SCN.3/WP.6. It has been the understanding since then that they would be redrafted under the responsibility of the Chairman of Special Commission 3 on the basis of the various comments and proposals made thereon. Working paper 6 was discussed during the third and fourth sessions of the Preparatory Commission, in 1985 and 1986 (see LOS/PCN/L.16, 26 and 32). It was revised by the Chairman and issued as document LOS/PCN/SCN.3/WP.6/Rev.1 on 6 June 1988.

2. Working paper 6/Add.2 on the financial terms of contract was discussed in a full first reading during the fourth, fifth and sixth sessions of the Preparatory Commission, in 1986, 1987 and 1988 (see LOS/PCN/L.38, 46, 52 and 59). In the course of the debate, various written amendments were introduced, namely LOS/PCN/SCN.3/WP.9, WP.10, WP.11 and Corr.1 and Add.1, and WP.12. The contents of these amendments have been taken into account by the Chairman as fully as possible when revising working paper 6/Add.2 in order to strike a careful balance between all interests concerned. Articles in the present revised text of addendum 2 have been renumbered, where necessary, and in such cases numbers between parentheses refer to the article numbers of working paper 6/Add.2.

3. Working paper 6/Add.3 on financial incentives was discussed in a full first reading during the fifth and sixth sessions of the Preparatory Commission, in 1987 and 1988 (see LOS/PCN/L.52 and 59). As was stated in document LOS/PCN/L.59, no suggestions for any appreciable change were made at the first reading. Therefore, the draft articles contained in working paper 6/Add.3 have not been revised by the Chairman. Since the financial incentives are of direct relevance to the financial terms of contract, the texts of both sets of articles are reproduced here in a single document.

4. From the outset, it has been the understanding that the deep-sea-bed mining code will be of a comprehensive nature. This means that users of the code will have only one piece of reference material, i.e., the code, and will therefore have no need to refer to the Convention or to its annexes.

5. Documents WP.6/Rev.1 and WP.6/Add.2/Rev.1, in which the text of articles 88 and 89 originally contained in WP.6/Add.3 has been incorporated, are intended by the Chairman to facilitate the work of the Special Commission at its second reading of these working papers. They should be seen as negotiating instruments in which the issues on which there were differences of opinion during the first reading have, in the view of the Chairman, been reduced in number. Revision on the basis of a future second reading should, in principle, further reduce such issues to the smallest possible number and those remaining should then be submitted to final negotiations among all interested delegations.

Article 2

Use of terms 1/

For the purposes of these regulations:

(1) "Accountants" means independent accountants certified under national law and selected in accordance with the present regulations and the rules and procedures of the Authority;

(2) "Accounting year" means a calendar year or such other period of 12 months as the Authority and the contractor may agree;

(3) "Cash surplus" 2/ in any accounting year means the contractor's gross proceeds received in that year, less the contractor's operating costs paid in that year and the payments in that year of the Authority's share of net proceeds;

(4) "Commencement of commercial production" means the date on which a contractor engages in a sustained large-scale recovery operation which yields a quantity of polymetallic nodules sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of equipment or plant;

(5) "Development costs" means:

(a) (i) All expenditures incurred by the contractor prior to the commencement of commercial production that are, according to normal business practice, directly related to prospecting, exploration and development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, including costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, research and development, interest, required leases, licences and fees; and

(ii) Expenditures similar to those set forth in (i) above incurred subsequent to the commencement of commercial production and necessary to carry out the plan of work, except those chargeable to operating costs;

1/ The provisions of this article will be incorporated in an article on the use of terms applying to the complete set of regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area ("deep-sea-bed mining code").

2/ The view was expressed that the case of the "negative" cash surplus, i.e., the operating costs being greater than the gross proceeds received, should be accounted for.

(b) Except that:

(i) If the contractor engages in mining only, the expenditures set forth in (a) (i) and (ii) above are limited to those that are directly related to the mining of the resources of the area covered by the contract; and

(ii) Such costs shall not include any costs for the production of metals in a form beyond that of processed metals;

(6) "Development costs of the mining sector" means the contractor's development costs that are, according to normal business practice, directly related to the mining of the resources of the area covered by the contract, including application fee, annual fixed fee, costs of prospecting and exploration of the area covered by the contract and research and development costs directly related to prospecting, exploration and exploitation of the resources of the area;

(7) "Gross proceeds" in any accounting year means:

(a) The gross revenues received by the contractor in that year from the sale of the polymetallic nodules recovered from the area covered by the contract or from the sale of semi-processed and/or processed metals from such nodules and any other monies attributable to the operations under the contract in accordance with the present regulations and the rules and procedures of the Authority;

(b) The proceeds derived in that year from the disposal of any capital assets previously included in the contractor's development costs and the market value of any such capital assets which are no longer required for operations under the contract and which are not sold, to the extent that such proceeds received and the market value exceed the contractor's development costs for that accounting year;

(8) "Index" means the United States wholesale price index as reported in International Financial Statistics, published monthly by the International Monetary Fund;

(9) "Market value of the processed metals" means the revenue from the sale on the international terminal market of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract; if such revenue cannot be determined, the "market value of the processed metals" shall be calculated as the product of the quantity of the processed metals and the average price for those metals during the relevant accounting year determined in accordance with article 74;

(10) "Net operating losses" in any accounting year means the contractor's gross proceeds, less the contractor's operating costs and less the recovery of contractor's development costs in that accounting year, if the result is negative;

(11) "Net proceeds" in any accounting year means the contractor's gross proceeds, less the contractor's operating costs and less the recovery of contractor's development costs in that accounting year, if the result is positive;

(12) "Operating costs" means all expenditures incurred by the contractor after the commencement of commercial production in the operation of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, including costs of surveying of the area covered by the contract, the annual fixed fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits including contributions to pension schemes, materials, services, transport, processing and marketing costs, interest, charges for utilities, expenditures on the preservation of the marine environment, overhead and administrative costs specifically related to operations under the contract and any net operating losses carried forward or backward, except that:

(a) If the contractor engages in mining only, "operating costs" means such expenditures that are directly related to the mining of the resources of the area covered by the contract;

(b) Such costs shall not include any costs arising from the production and sale of metals in a form beyond that of processed metals;

(c) Net operating losses may be carried forward for two consecutive accounting years except in the last two accounting years of the contract, in which case they may be carried backward to the two preceding years; 3/

(13) "Processed metals" means the metals in the most basic forms in which they are customarily traded on the international terminal markets specified in the rules and procedures of the Authority. For the metals that are not traded on such markets, "processed metals" means the metals in the most basic forms in which they are customarily traded in representative arm's-length transactions;

(14) "Return on investment" in any accounting year means the ratio of attributable net proceeds in that year to the development costs of the mining sector as at the end of the preceding accounting year. If the contractor engages in mining only, "return on investment" means the ratio of the contractor's net proceeds in that year to the contractor's development costs as at the end of the preceding accounting year. For the purpose of computing these ratios, the development costs of the mining sector shall be all expenditures according to paragraph (6), including expenditures for new equipment less the original costs for replacement equipment to the extent that these costs have been recovered according to article 79

3/ The view was expressed that the number of years provided for in this paragraph should be increased.

/ ..

PART VI

A. FINANCIAL TERMS OF CONTRACT

Article 70

Scope of this part

1. This part applies to contracts for exploration or exploitation or for exploration and exploitation of polymetallic nodules in the Area.

2. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of commercial production by it, the Assembly shall exempt the Enterprise from the payments referred to in this part and shall leave all the net income of the Enterprise in its reserves.

Article 71

Annual fixed fee

1. The contractor shall pay to the Authority an annual fixed fee of $US 1 million or, in the case of a contract for exploration only, of $US 4/

2. The first payment of the annual fixed fee shall be made *pro rata* for the balance of the calendar year then remaining after the date of entry into force of the contract, and shall be paid within 60 days from that date.

3. Each subsequent payment of the annual fixed fee shall be made on or before 1 January of each subsequent year.

4. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with part V:

(a) The annual fixed fee shall be waived by the Council for the period of postponement;

(b) The payment of the annual fixed fee shall be made when the production authorization is issued, *pro rata* for the balance of the calendar year then remaining; and

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4/ The view was expressed that the amount to be paid for a contract for exploration only should be less than the amount to be paid for a contract for exploration and exploitation or for exploitation only. Another view expressed was that the annual fixed fee of $US 1 million should apply to all contracts.

(c) The Authority shall refund at the end of that year an amount of the annual fixed fee, pro rata for the period of postponement during that year where, during a calendar year in respect of which a contractor has paid the fixed fee, there was a period of postponement.

5. The Authority shall on or before 1 December notify each contractor of the annual fixed fee, adjusted in accordance with article 84, which shall be effective as of 1 January of the subsequent year.

Article 72

Choice of financial contribution

1. Within a year from the commencement of commercial production, the contractor shall choose to make its financial contribution to the Authority by paying either:

(a) A production charge only; or

(b) A combination of a production charge and a share of net proceeds.

2. The contractor shall notify the Authority of its choice in writing.

3. The choice of the financial contribution shall not be changed without the consent of both the contractor and the Authority.

4. Whenever the production charge or the combination of the production charge and the share of net proceeds exceeds the annual fixed fee at the end of the accounting year, the latter shall be deducted on payment. However, the contractor shall not pay less than the amount of the annual fixed fee in any accounting year.

Article 73

Production charge

1. If the contractor chooses to make its financial contribution to the Authority by paying a production charge only, the charge shall be fixed at a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:

(a) 5 per cent 5/ for the first 10 years after the commencement of commercial production; and

(b) 12 per cent 5/ thereafter to the end of commercial production.

5/ The view was expressed that the figures provided for in this article should be left unspecified until a later stage of negotiations.

2. If the contractor chooses to make its financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, the production charge shall be a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract fixed as follows:

(a) 2 per cent 5/ for the first period of commercial production; and

(b) 4 per cent 5/ for the second period of commercial production.

If, in the second period of commercial production, the return on investment in any accounting year falls below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.

Article 74 (74, 75, 76)

Half-yearly returns and payment of production charge

1. The contractor shall submit a report to the Authority within 60 days from the end of each half-year accounting period specifying:

(a) The quantity and metal content of polymetallic nodules recovered from the area covered by the contract in that period;

(b) The quantity of processed metals produced therefrom in the half-year period together with a statement of the processing recovery efficiency and other relevant factors;

(c) The average price of processed metals on an international terminal market for that accounting period or otherwise as may be determined as a fair price in accordance with article 81 (accounting principles) for that accounting period;

(d) The calculation of the production charge payable for the half-year period.

2. Within 30 days after the submission of the report referred to in paragraph 1, the contractor shall make payment to the Authority of the production charge payable for that accounting period.

3. Upon receipt of the second of the two half-yearly reports by the contractor, the Authority shall make available to the accountants the two reports for that accounting year.

4. The accountants shall verify whether the determination of the production charge is in conformity with these regulations and report their findings to the Authority within 60 days. During this period the Authority may require the contractor to submit additional information as it deems necessary.

5. If it is found that the determination is not in conformity with the present regulations, the Authority shall consult with the contractor with a view to

reaching agreement. If agreement is not reached within 30 days, the provisions of article 87 on the settlement of disputes shall apply.

Article 75 (77)

Authority's share of attributable net proceeds

If the contractor chooses to make its financial contributions to the Authority by paying a combination of a production charge and a share of net proceeds, the contractor shall pay the Authority's share of attributable net proceeds determined in accordance with the following incremental schedule:

	Share of the Authority	
Portion of attributable net proceeds	First period of commercial production	Second period of commercial production
That portion representing a return on investment which is greater than 0 per cent but less than 10 per cent	35 per cent 6/	40 per cent 6/
That portion representing a return on investment which is 10 per cent or greater but less than 20 per cent	42.5 per cent 6/	50 per cent 6/
That portion representing a return on investment which is 20 per cent or greater	50 per cent 6/	70 per cent 6/

Article 76 (78)

Determination of the first and second periods of commercial production

1. The first period of commercial production shall commence at the beginning of the first accounting year of commercial production and terminate at the end of the accounting year in which the contractor's development costs are fully recovered by its cash surplus, as follows:

(a) At the end of the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less the cash surplus in that year;

6/ The view was expressed that the figures appearing in this article should be left unspecified until a later stage of negotiations.

(b) At the end of each subsequent accounting year, unrecovered development costs shall equal the sum of the unrecovered development costs at the end of the preceding accounting year, interest thereon at the rate of 10 per cent per annum, the adjustment thereon as a result of any change in the index from the end of the preceding accounting year and development costs incurred in the current accounting year, less the cash surplus in the current accounting year;

(c) Development costs in any accounting year shall be those paid in that year less the proceeds received in that year from the disposal of any assets that are not included in contractor's gross proceeds;

(d) Interest shall be excluded from both contractor's operating costs included in cash surplus and development costs;

(e) The accounting year in which unrecovered development costs become zero for the first time shall be the accounting year in which the contractor's development costs are fully recovered by its cash surplus.

2. The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.

Article 77 (79)

Determination of attributable net proceeds

1. Attributable net proceeds for any accounting year shall be the product of the contractor's net proceeds in that accounting year and the ratio as at the end of the preceding accounting year of the contractor's development costs in the mining sector to the contractor's total development costs, except that:

(a) If the contractor engages in mining only, attributable net proceeds shall be the whole of the contractor's net proceeds; and

(b) If the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds for the year shall not be less than 25 per cent 7/ of the contractor's total net proceeds. 8/

7/ The view was expressed that the figure appearing in this subparagraph should be reconsidered at a later stage.

8/ In all cases other than those referred to in (a) and (b) above, including the cases where the contractor engages in mining, transporting polymetallic nodules and production primarily of four processed metals, namely cobalt, copper, nickel and manganese, the Authority will have to address the question of whether it will in its rules and procedures prescribe appropriate floors bearing the same relationship to each case as the 25 per cent floor does to the three-metal case.

/...

2. The Authority and the contractor may agree on a ratio of development costs in the mining sector to the contractor's development costs for the term of the contract or for a shorter period.

Article 78 (80)

Interest in respect of development and operating costs

1. In any accounting year or part thereof, any interest paid by the contractor in respect of the contractor's development costs, development costs of the mining sector and operating costs shall be allowed with due regard for existing commercial practice.

2. In case the Authority considers that the debt-equity ratio and the rates of interest do not reflect existing commercial practice, it shall consult with the contractor with a view to reaching agreement. If agreement is not reached within 30 days, the provisions of article 87 on the settlement of disputes shall apply.

Article 79 (81)

Recovery of contractor's development costs

The contractor's development costs incurred prior to the commencement of commercial production shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract. 9/

Article 80 (82)

Calculation and payment of the Authority's share of attributable net proceeds

1. All calculations to determine attributable net proceeds shall be made in United States dollars. Transactions made in other currencies shall be converted to United States dollars at the average of the buying and selling rates quoted by the International Monetary Fund for the day when payment is made.

2. In calculating return on investment and attributable net proceeds, a contractor's total development costs or development costs of the mining sector

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9/ The view was expressed that the timing of recovery should not be specified in this article but should be a matter for negotiations between the Authority and the contractor.

/...

shall, at the end of any accounting year, be the contractor's total development costs or development costs of the mining sector in the accounting year in which such costs were incurred, plus the adjustment thereon as a result of any change in the index in the current accounting year.

3. Within 90 days after the end of the first half-year of the accounting year, each contractor shall make an interim payment of the Authority's share of attributable net proceeds in an amount equal to 50 per cent of the Authority's share of attributable net proceeds in the previous accounting year as determined by the Authority. In the accounting year in which the commencement of commercial production occurs, the contractor shall pay an amount equal to 50 per cent of the contractor's estimated payment for that year.

4. Within 60 days after the end of each accounting year, the contractor shall submit to the Authority its calculations of the Authority's share of attributable net proceeds for that year. The submission shall be accompanied by all data required to determine whether the calculation is in conformity with the present regulations.

5. Within 30 days after the submission of such calculations, the contractor shall make payment of the amount so calculated less the interim payment already made for the first half-year accounting period.

6. Upon receipt of the calculations and data referred to in paragraph 4, the Authority shall make them available to the accountants. The accountants shall verify whether the calculations are in conformity with the present regulations and report their findings to the Authority within 60 days. During this period the Authority may require the contractor to submit additional information as it deems necessary.

7. The Authority shall then make its determination of the Authority's share of attributable net proceeds for the relevant year. However, if the Authority considers that the calculations are not in conformity with these regulations, it shall consult with the contractor with a view to reaching agreement on the calculations before making its determination. If agreement is not reached within 30 days, the provisions of article 87 on the settlement of disputes shall apply.

Article 81 (83)

Accounting principles

1. All costs, expenditures, proceeds and revenues and all determinations of prices and values referred to in this part shall be the result of free market or arm's-length transactions. In the absence thereof, they shall be determined by the Authority, after consultations with the contractor, as though they were the result of free market or arm's-length transactions, taking into account relevant transactions in other markets.

/...

2. The Authority shall be guided by the principles adopted for, and the interpretation given to, arm's-length transactions by the relevant bodies of the United Nations and other international organizations. 10/

3. All costs, expenditures, proceeds and revenues and all prices and values referred to in the present regulations shall be determined in accordance with any generally recognized accounting principles and the rules and procedures of the Authority.

Article 82 (84)

Payment to the Authority

1. The payments to the Authority referred to in articles 74 and 80 shall be made in United States dollars, or, at the contractor's option, in the equivalent, at market value, in processed metals.

2. If the contractor chooses to make payments in the form of processed metals, it shall, after consultations with the Authority, notify the Authority not later than 90 days before the beginning of an accounting year, in order to give the Authority adequate time to make marketing arrangements to sell the metals. The contractor shall bear the costs of transporting, storing, insuring and selling the metals.

3. The Authority, upon receipt of notification referred to in paragraph 2, shall notify the contractor of the quantities of processed metals to be delivered each half year, the value of which shall be determined in accordance with articles 74, paragraph 1 (c), and 81.

Article 83 (new)

Interest on delayed payments and refunds

Interest at the prevailing commercial rate shall be charged on all delayed payments made by the contractor to the Authority. Likewise, the Authority shall pay such interest on all refunds made by it to the contractor.

Article 84 (new)

Indexation

The fees and payments which are to be adjusted by the Council as required by this part shall be adjusted in accordance with any change in the index for each 12 month period ending 31 December, starting from the year of approval of the first plan of work as the base year.

10/ For example, the Commission on Transnational Corporations and the Group of Experts on Tax Treaties between Developing and Developed Countries.

/...

Article 85

Selection of accountants

1. For the purpose of carrying out auditing, the Authority shall maintain a list of independent accountants whose names shall be submitted by States and who shall be qualified under national law.

2. The contractor shall select from that list ... accountants 11/ who have not rendered professional services to that contractor or its affiliates at any time during the three years prior to the date of selection.

3. The contractor shall notify the Authority of the names of the selected accountants within 30 days from the date of entry into force of the contract.

4. The contractor may change its selection of accountants by giving the Authority not less than 90 days' notice specifying the reasons for such change.

5. The level of remuneration and expenses to be paid by the Authority to the accountants selected by the contractor shall be agreed between the Authority and the accountants.

Article 86

Annual fixed fee to be paid by pioneer investors

Every registered pioneer investor shall pay an annual fixed fee of $US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon approval of its plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such a plan of work shall be adjusted to take account of the payments made pursuant to this article. 12/

Article 87

Settlement of disputes

In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of the contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree

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11/ The number of accountants will have to be specified at a later stage.

12/ The view was expressed that this article is of a transitional nature and should not be included in the present draft regulations.

to settle the dispute by other means, in accordance with article 188, paragraph 2, of the Convention. 13/

B. REGULATIONS ON FINANCIAL INCENTIVES

Article 88

Incentives for contractors

The Council may, in order to further the objectives set forth in annex III, article 13, paragraph 1, of the Convention, provide appropriate incentives to contractors on a uniform and non-discriminatory basis, which may include the following:

(a) Waiving all or part of the payments due to the Authority for a specified period of time;

(b) Deferring or exempting revenues from the calculations of gross proceeds for the purposes of determining attributable net proceeds or determining the end of the first period of commercial production;

(c) Reducing the prescribed fees, charges and rates of payments;

(d) Accelerating depreciation or amortization of capital expenditures;

(e) Approving debt-equity ratios which are higher than reasonable having regard to existing commercial practices;

(f) Approving rates of interest which are higher than reasonable rates having regard to existing commercial practices;

(g) Allowing the contractor costs higher than actual costs for training and transfer of technology in order to reduce the amount of net proceeds due to the Authority;

(h) Crediting certain expenditures against the production charge and the share of net proceeds payable to the Authority;

(i) Adjusting development costs to reflect replacement costs rather than historical costs;

(j) Postponing or extending the prescribed dates of payment to the Authority;

(k) Making direct payments or loans to the contractor.

13/ General provisions on the settlement of disputes will have to be incorporated at the end of the present draft regulations.

Article 89

Incentives for contractors in joint arrangements

The Council may provide to contractors entering into joint arrangements with the Enterprise incentives referred to in article 88 or other appropriate incentives including:

(a) Cash flow distribution preferences;

(b) The postponement of delivery dates of the Authority's share of production.

LOS/PCN/SCN.3/WP.6/Add.3
11 March 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Fifth session
Kingston, Jamaica
30 March-16 April 1987

VII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

(DRAFT FINANCIAL TERMS OF CONTRACT)

(DRAFT REGULATIONS ON FINANCIAL INCENTIVES)

Working paper by the Secretariat

Addendum

Introductory note

The present addendum contains the draft regulations on financial incentives and an explanatory memorandum describing the contents of the draft regulations. They follow in sequential order the draft regulations already submitted in documents LOS/PCN/SCN.3/WP.6 and Add.1 and Add.2. The Commission may wish to review the final placement of these regulations in the light of further work on the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area. Draft articles will also be prepared on accounting principles to be issued by the International Sea-Bed Authority.

Article 88

Incentives for contractors

The Council may, in order to further the objectives set forth in annex 3, article 13, paragraph 1 of the Convention, provide appropriate incentives to contractors on a uniform and non-discriminatory basis, which may include, inter alia, the following: 1/

(a) Waiving all or part of the payments due to the Authority for a specified period of time;

(b) Deferring or exempting revenues from the calculations of gross proceeds for the purpose of determining attributable net proceeds or determining the end of the first period of commercial production;

(c) Reducing the prescribed fees, charges and rates of payments;

(d) Accelerating depreciation or amortization of capital expenditures;

(e) Approving debt-equity ratios which are higher than reasonable having regard to existing commercial practices; 2/

(f) Approving rates of interest which are higher than reasonable rates having regard to existing commercial practices; 2/

(g) Allowing the contractor costs higher than actual costs for training and transfer of technology in order to reduce the amount of net proceeds due to the Authority;

(h) Crediting certain expenditures against the production charge and the share of net proceeds payable to the Authority;

(i) Adjusting development costs to reflect replacement costs rather than historical costs;

(j) Postponing or extending the prescribed dates of payment to the Authority; and

(k) Making direct payments or loans to the contractor.

1/ A3/13 (14).

2/ A3/13 (6) (o).

Article 89

Incentives for contractors in joint arrangements

The Council may provide to contractors entering into joint arrangements with the Enterprise incentives referred to in article 88 or other appropriate incentives including:

(a) Cash flow distribution preferences;

(b) The postponement of delivery dates of the Authority's share of production.

Explanatory memorandum

I. GENERAL

1. The basis for the provision of incentives is A3/13 (14), which states:

> "The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules, regulations and procedures that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1".

2. The objectives set out in paragraph 1 [A3/13 (1)] are:

(a) To ensure optimum revenues for the Authority from the proceeds of commercial production;

(b) To attract investments and technology to the exploration and exploitation of the Area;

(c) To ensure equality of financial treatment and comparable financial obligations for contractors;

(d) To provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing States or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States;

(e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2(b); and

(f) To ensure that, as a result of the financial incentives provided to contractors under paragraph 14, under the terms of contracts reviewed in accordance with article 19 of this annex or under the provisions of article 11 of this annex with respect to joint ventures, contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

3. At the outset, it may be useful to note that A3/13 has recognized the pioneer aspects of sea-bed mining by designing a fiscal régime which takes into account different levels of profitability; the timing of cash flows; broadly defined prospecting, exploration and development costs; and the methods from which a contractor may choose to make his financial contribution to the Authority. The system is also designed to minimize the fiscal impact on a contractor in the early years of production. These provisions are similar to those used in municipal land-based régimes to encourage investment in the mining sector.

4. The practical implications must be considered in determining the incentives to be offered, for all contractors will probably not be able to benefit to the same degree from the same incentives so as to have those incentives qualify as "uniform" and "non-discriminatory". As there will be broad differences in the very nature of the contractors (privately owned, parastatals and governments) and the financial systems in which they operate (market or centrally planned economies), it will be difficult to devise incentives so as literally to "ensure equality of financial treatment and comparable financial obligations". 3/

5. Moreover, as some contractors will choose to pay a production charge only and others will choose to pay a combination of a production charge and a share of net proceeds, it will be extremely difficult to offer the same incentives to contractors choosing one system which will have the same financial result for the contractors that choose the other system.

6. It should be noted that the tax status of contractors will probably be different unless municipal tax systems are changed to take into account mining in an international area in accordance with the United Nations Convention on the Law of the Sea rather than in a foreign jurisdiction so as to avoid double taxation. Some contractors may not be subject to any taxation; those that are will be subject to different municipal tax régimes. Some municipal tax régimes may not be changed to take into account mining in international areas. As a consequence some incentives given by the Council, on a net after-tax basis, may not be realizable. In such cases, providing incentives will benefit neither the contractor nor the Authority, but only the municipal tax authorities. The tax position of different contractors even within the same municipal tax system may be different, leading to different net after-tax results. The solution would be for municipal tax authorities not to tax contractors mining in the international sea-bed area.

7. The regulations may authorize a variety of financial incentives from among which the Council may choose one or more, on a case-by-case basis, so as to offer incentives when:

(a) Necessary to meet constraints that actually exist;

(b) Realizable on an after-tax basis; and

3/ A3/13 (1) (c).

(c) The requirements of A3/13 (1) are met as nearly as possible so that the result is non-discriminatory and justified on a cost/benefit basis.

II. COMMENTARY

8. The following provides an explanation of the various incentives contained in article 88:

(a) Waivers. A common incentive found in municipal land-based mining fiscal régimes is simply to waive or forego the collection of fees, royalties or taxes for a limited period. In the case of taxes, this is commonly called a "tax holiday". However, A3/13 mandates an annual fixed fee and the basic imposition of a production charge or the combination of the charge and a share of net proceeds.

It would be difficult to ensure "equality of financial treatment and comparable financial obligations for contractors" if this kind of incentive were to be offered to all contractors regardless of their net after-tax result. 4/

Note that this incentive will result in the loss of revenue by the Authority, whereas other financial incentives discussed below would merely postpone the collection of revenue. They would "cost" the Authority the use-of-money factor, but that cost will be relatively minor compared to the loss of the revenue altogether.

(b) Deferrals or exemptions of revenues. The equivalent of a tax holiday might be achieved by deferring revenue from being considered "gross proceeds" for a limited period of time, for purposes of calculating "attributable net proceeds", or in determining the end of the first period of commercial production. This would at least offer the possibility of ensuring "equality of financial treatment" for those contractors choosing to make a combination of a production charge and a share of net proceeds to the Authority. Perhaps this could be equated to the financial benefit which could be offered to a contractor paying a production charge only by postponing or extending payment dates, as discussed in paragraph (j) below.

4/ As referred to in paragraph 6, it should be noted that the municipal tax treatment of payments to the Authority is far from predictable at this stage, so that the financial results of such a waiver may not be predictable. It may be that the production charge will be likened to a royalty, which is usually considered a deduction in the calculation of taxable income. The Authority's share of net proceeds may be considered the equivalent of an income tax and hence may be creditable or used to offset the amount of taxes otherwise payable in the home country. If the Authority's share of net proceeds is to be considered equivalent to a tax payment, foregoing the collection of the share may not result in any net benefit to a contractor in a taxation system which does not allow for tax-sparing arrangements. It would be important, therefore, to be assured that any waiver given by the Authority would really act as an incentive, i.e., give the contractor a net after-tax benefit which it would not otherwise have.

(c) Reduced fees, charges and rates. A common incentive is to reduce the applicable fees, charges and rates. However, as indicated above, the annual fixed fee of $US 1 million appears to be mandated by A3/13 (3), the production charge at the specified percentage level fixed by A3/13 (5) and (6), and the Authority's portion of annual net proceeds fixed by A3/13 (6). Reducing these fees and charges across the board would ensure non-discriminatory treatment.

(d) Accelerated depreciation. Another common financial incentive is to provide for a faster depreciation or amortization of capital expenditures by depreciating or amortizing them over a shorter period than normally provided by generally accepted accounting principles; or by writing them off disproportionately so as to "front-load" the deduction, by increasing depreciation and amortization in the earlier periods and reducing it in the latter periods. This offers a cash-flow, use-of-money benefit to the contractor, which will not require that the Authority forego revenue in the long run. There are a number of such front-load systems which accomplish the same result with relatively slower or faster cash flows. 5/ In order fully to realize the benefit of accelerated depreciation, it may be necessary to provide for loss carry-forward and loss carry-backward beyond the two-year period specified in A3/13 (6) (k).

(e) Debt-equity ratios. Because of anticipated large borrowings, permitting a high debt-to-equity ratio could be of substantial benefit to a contractor. Of course, the higher the debt, the higher the interest payments and as interest payments are part of "development costs", this would extend the first period of commercial production. Interest payments are also "operating costs", so that interest charges will reduce the amount of the Authority's share of net proceeds.

In a joint venture arrangement, this might also have the effect of reducing the amount of the Authority's contribution.

Permitting a relatively high debt-equity ratio would appear to be within the Authority's powers, as it has some flexibility under A3/13 (6) (o). However, this should not be considered a blank cheque, as the debt-equity ratio must be "reasonable having regard to existing commercial practice", in accordance with this provision. This could be another area which may be inherently discriminatory, since some contractors may not use loan financing in the conventional sense, as they may be parastatal enterprises operating within the framework of centrally planned economies.

(f) Interest rates. Similarly, the Authority also has flexibility in approving interest rates under A3/13 (6) (o). Allowing liberal interest rates could be an incentive if loan finance is obtained from affiliates of the contractor. Higher-than-"normal" interest rates could be used to reduce security or guarantee requirements which might otherwise be more onerous. However, this device would be subject to the same limitations discussed in paragraph (e) above.

5/ However, it should be observed that A3/13 (6) (j) requires that depreciation be taken in 10 equal instalments from the date of commencement of commercial production.

(g) "Loading" costs. Costs incurred in training personnel of the Authority and in the transfer of technology to the Authority could be "loaded", i.e., charging more than 100 per cent of such costs in the calculation of the contractor's "operating costs". This would reduce the amount of the net proceeds which the Authority shares. For example, one country allows 200 per cent of the cost of wages of nationals in training programmes as a deduction against taxable income.

(h) Credit for certain expenditures. Alternatively, such expenditures could be credited directly against the production charge and the share of net proceeds payable to the Authority by the contractor. This would be similar to a tax credit in a municipal tax régime and would offer the advantage, perhaps more than any of the other possibilities, of providing an incentive on a uniform and non-discriminatory basis.

(i) Replacement accounting. "Development costs" could be defined on a replacement basis rather than a historical cost basis. The former obviously takes inflation into account, and that is usually why replacement accounting is used, i.e., in relatively high inflationary periods. However, development costs are already indexed, as per draft Regulation article 78 (1) (b), in accordance with A3/13 (6) (d) (i) and A3/13 (13). Therefore, replacement accounting would in effect provide for double (or greater) indexation. This could be quite attractive to those contractors experiencing relatively high inflationary rates, but may not be of similar value to those contractors which do not.

(j) Postponed or extended payment dates. A3/13 (3) establishes a fixed fee and a specific date of payment. Payment of the production charge and the share of net proceeds on a quarterly basis is provided for in document LOS/PCN/SCN.3/WP.6/Add.2, articles 76 (1) and 82 (3). Payment on a half-yearly or yearly basis would provide a significant financial incentive. An even greater financial benefit would be to postpone payment for a year or more, or provide that only a part of the payment need be made (for example 50 per cent) when due and the balance paid either in instalments or after a specified return on investment has been reached.

(k) Direct payment or loans to the Contractor. While, in view of A3/13 (1) (f), a direct payment or even a loan by the Authority to a contractor might be considered a "subsidy", such capital contributions could be permissible within a joint-venture equity or a profit-sharing arrangement. Similarly, a loan by the Authority could be disproportionate to its equity or profit-sharing arrangement. Such incentives, while not common, are found in national land-based projects where a Government, directly or through a development bank, may provide equity or loan capital, or make contributions in kind.

9. The following provides an explanation of the incentives contained in article 89:

(a) Preferential cash flow distribution and postponement of dates of delivery of the Authority's share of production. The Authority may provide contractors in joint arrangements with the Enterprise the incentives referred to in article 88 or other incentives which it may deem appropriate, including preferential cash flow distribution so as to give the contractor a larger earlier cash flow than it gives itself, or postponing the dates of delivery of the Authority's share of production, which would have a similar financial result. The nature and extent of the incentives to be provided will depend on the terms of the joint arrangement between the Authority and a contractor. Such incentives may relate to the share of equity in the joint arrangement, the contribution to be made by the contractor in respect of capital, technology, training or other matters.

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LOS/PCN/SCN.3/WP.6/Add.4
10 February 1988

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Kingston, Jamaica
14 March-8 April 1988

VIII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

(DRAFT REGULATIONS ON THE TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE)

Working paper by the Secretariat

Addendum

Explanatory note

1. The present addendum contains draft regulations on transfer of technology until 10 years after the commencement of commercial production by the Enterprise. The draft has been prepared taking into account the context in which the transfer of technology provisions were included in part XI of the Convention, i.e. as part of the parallel system for the development of the resources of the international sea-bed area. Under this system, State and private operators will have the opportunity to mine manganese nodules in the areas allocated to them and, at the same time, the Enterprise would also have the opportunity to develop reserved areas. It was considered necessary that the contractor should assist and co-operate with the Enterprise in obtaining the technology which it may need for its initial operation and which it is unable to obtain on the open market at a fair and reasonable price. Consistent with this objective, the provisions of the Convention include the following key elements:

(a) that the obligation of a contractor is a last-resort obligation and is only applicable if the Enterprise is unable to obtain the required technology on the open market at a fair and reasonable price;

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(b) that the obligation ceases after the tenth year of commercial production by the Enterprise and may be invoked during that period;

(c) that if the obligation is invoked, the resulting sale of technology by the contractor is to be at a fair and reasonable commercial price which is subject to commercial arbitration.

2. In order to give effect to the spirit of the provisions of the Convention, the draft regulations contained in the present document elaborate a set of procedures, in particular in article 94, for the obtaining of technology by the Enterprise. The procedural mechanism is based on the requirements contained in annex III, article 5, paragraph 3 (a), which reads, inter alia:

> "This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions."

3. Thus, the Enterprise has to make every effort to obtain the required technology on the open market on fair and reasonable commercial terms and conditions. If it is unable to find such technology, it shall, in the first place, seek the assistance of the contractor who has the technology or other contractors to obtain such technology. If these efforts should fail, the Governing Board of the Enterprise shall determine that the Enterprise is unable to obtain the technology and that the Council should be requested to invoke the contractor's undertaking. Before proceeding to invoke the undertaking, the Council shall obtain the advice of the Legal and Technical Commission as an independent body. If the Legal and Technical Commission advises against invoking the undertaking, the Council shall consider this recommendation and determine the appropriate course of action. If the Commission recommends that the undertaking should be invoked, the Council shall request the contractor to commence negotiations with the Enterprise to make the required technology available to it. Where the contractor is not the owner of the technology, the Council shall request the contractor either to enter promptly into negotiations with the owner of the technology to carry out its undertakings or to facilitate the acquisition of the required technology. The remaining parts of the draft regulations reflect other provisions of annex III, article 5.

4. In elaborating the mining code the Secretariat has attempted, as in the past, to clarify and simplify the procedural steps necessary for the implementation of the provisions of the Convention in a fair and equitable manner, which, it is hoped, would remove any concern regarding the application of the provisions in the Convention on transfer of technology.

PART VII

TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE

Article 90

Scope of these regulations

1. These regulations on transfer of technology apply to exploration and exploitation of polymetallic nodules in the Area. [1]

2. The undertakings required by articles 92, 93 and 95 shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production [2] by the Enterprise, and may be invoked during that period. [3]

Article 91

Use of terms

For the purposes of these regulations:

"technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis. [4]

Article 92

Undertakings in contracts on transfer of technology which the contractor is legally entitled to transfer

Every contract for carrying out activities in the Area shall contain undertakings by the contractor to make available to the Enterprise, on fair and reasonable commercial terms and conditions, whenever the Council so requests, the

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[1] A3/5.

[2] See LOS/PCN/SCN.3/WP.6, art. 2, "Use of terms".

[3] A3/5 (7).

[4] A3/5 (8).

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technology which it uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. [5]

Article 93

Undertakings in contracts on transfer of technology which the contractor is not legally entitled to transfer

1. Every contract for carrying out activities in the Area shall contain undertakings by the contractor that it shall:

(a) obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by article 92, that the owner will, whenever the Council so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor; [6]

(b) facilitate, upon the request of the Enterprise, the acquisition of any such technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology. [7]

2. If the assurance required by paragraph 1 (a) is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area. [8]

3. Every contract for carrying out activities in the Area shall contain undertakings by the contractor to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in the Area under the contract which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market. [9]

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[5] A3/5 (3) (a).

[6] A3/5 (3) (b).

[7] A3/5 (3) (d).

[8] A3/5 (3) (b).

[9] A3/5 (3) (c).

/...

4. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. 10/

5. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work. 11/

Article 94

Procedure for obtaining technology

1. Before requesting that the Council invoke such undertakings, the Enterprise shall have complied with the following procedures:

(a) The Enterprise shall make every effort to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions pursuant to annex IV, article 12, of the Convention;

(b) If the Enterprise is unable to obtain the technology on such terms and conditions, the Enterprise shall request the contractor and, if appropriate, other contractors to assist it to obtain such technology on such terms and conditions; 12/

(c) If these efforts should fail, the Governing Board of the Enterprise may make a finding in accordance with its procedures that the Enterprise is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions; 13/

(d) If the Governing Board of the Enterprise makes such a finding, it shall request the Council to invoke the contractor's undertakings. This request shall be accompanied by a report on the efforts made by the Enterprise in accordance with subparagraphs (a) and (b).

2. Upon the receipt of such request, the Council shall ask the Legal and Technical Commission to consider the report and make recommendations as to whether the undertakings should be invoked. 14/

10/ *Ibid*.

11/ *Ibid*.

12/ A3/5 (5).

13/ A3/5 (3) (a).

14/ Art. 165, para. 2 (a).

3. The Council shall be deemed to have approved the recommendation of the Legal and Technical Commission after a lapse of 30 days after receipt of the recommendation by the Secretary-General unless within that period the Council decides otherwise by consensus. 15/

4. Upon approval by the Council of the recommendation to invoke the undertakings, the Secretary-General shall request that the contractor promptly commence negotiations with the Enterprise to make available to it the technology which the contractor uses in carrying out activities in the Area and which the contractor is legally entitled to transfer, on fair and reasonable commercial terms and conditions. Such negotiations shall be completed within 60 days, which may be extended by agreement of the parties. 16/ The parties shall keep the Council informed of the results of these negotiations.

5. In cases where the Council decides that the undertakings should not be invoked, it may decide on any other appropriate action.

6. In the case of technology which the contractor is not legally entitled to transfer, the Council shall request the contractor either to enter promptly into negotiations with the owner of the technology to carry out the undertakings specified in article 93, paragraph 3, or to facilitate the acquisition of any such technology, if the Enterprise decides to negotiate directly with the owner of the technology in accordance with article 93, paragraph 1.

7. The specific agreement between the contractor or the owner of the technology and the Enterprise for the use of such technology shall contain licences and other appropriate arrangements and shall be supplementary to the contract between the Authority and the contractor. 17/ The terms of such an agreement may include an undertaking by the Enterprise to protect confidential data and information.

Article 95

Undertakings in contracts with respect to transfer of technology for the benefit of developing States

1. Every contract for carrying out activities in the Area shall contain undertakings by the contractor to take at the request of the Council the same measures as are prescribed in articles 92 and 93 of these regulations for the benefit of a developing State or group of developing States which has entered into

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15/ Art. 162, para. 2 (j) (i), of the Convention.

16/ A3/5 (3) (a).

17/ *Ibid*.

a joint venture with the Enterprise or submitted an application for approval of a plan of work for carrying out activities in a reserved area. 18/

2. Such measures shall be limited to the use of the technology in the exploitation of the part of the area proposed by the contractor which has been designated to be a reserved area pursuant to annex III, article 8, of the Convention. 19/

3. The contractor shall not be obligated to take such measures if:

(a) such activities by the developing State or group of developing States would involve transfer of technology to a third State or the nationals of a third State; or

(b) such technology has been requested by the Enterprise or transferred by that contractor to the Enterprise. 20/

Article 96

Procedure for obtaining technology by developing States

Before making the requests referred to in article 95, the Authority shall follow *mutatis mutandis* the procedures set forth in article 94.

Article 97

Limitations on undertakings

1. These regulations shall not be deemed to require a State Party to supply information the disclosure of which is contrary to the essential interests of its security. 21/

2. Where a contractor which is not a State is prohibited from transferring technology which it uses in carrying out activities in the Area by the national law applicable to that contractor because of national security considerations, it shall submit to the Authority a certificate to that effect from the State Party of which it is a national or by which it is effectively controlled. 22/

18/ A3/5 (3) (e); A3/9 (4).

19/ A3/5 (3) (e).

20/ *Ibid*.

21/ United Nations Convention on the Law of the Sea, art. 302.

22/ *Ibid*.

3. Subject to article 95, paragraph 1, in the case of joint ventures with the Enterprise, the transfer of technology shall be in accordance with the terms of the joint venture agreement. 23/

Article 98

Notification of revisions

Every operator shall notify the Council in writing of revisions in the description and information made available pursuant to article 32 24/ to the Council of the equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available within 90 days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out activities in the Area. 25/

Article 99

Disputes concerning a contractor's undertakings

1. Disputes as to whether offers made by the contractor or the owner of technology are within the range of fair and reasonable commercial terms and conditions may be submitted by the contractor or the owner of the technology, by the Council or by the Enterprise to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. 26/

2. If the finding is that the offer made by the contractor or the owner of technology is not within the range of fair and reasonable commercial terms and conditions, the contractor or the owner of the technology shall be given 45 days to revise his offer to bring it within that range before the Council takes any action under annex III, article 18, of the Convention. 27/

23/ A3/5 (6).

24/ See document LOS/PCN/SCN.3/WP.6.

25/ A3/5 (2).

26/ A3/5 (4).

27/ *Ibid*.

Article 100

Disputes concerning other undertakings required by these regulations

1. Disputes concerning undertakings required by articles 92, 93 and 95 of these regulations, other than those submitted under article 99 of these regulations, shall be subject to compulsory settlement in accordance with part XI of the Convention. [28]

2. If the contractor is found to be in violation of these undertakings, the contractor's rights under the contract may be suspended or terminated or monetary penalties may be ordered under annex III, article 18, of the Convention. [29]

Article 101

Consultation by a group of States Parties

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. [30]

2. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. [31]

3. Each such State Party shall take all feasible measures to this end within its own legal system. [32]

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[28] A3/5 (4) and A3/18. Article 94 is not included since it is an internal procedure of the Enterprise which must be followed before any dispute with respect to contractual obligations arises.

[29] *Ibid*.

[30] A3/5 (5).

[31] *Ibid*.

[32] *Ibid*.

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LOS/PCN/SCN.3/WP.6/Add.4/Rev.1
9 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
New York, 13-31 August 1990

IX. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART VII

TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE

Working paper by the Secretariat as revised by the Chairman

/...

Explanatory note

1. At the end of its informal meetings, held during its second session in 1984, Special Commission 3 of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea requested the Secretariat to prepare, inter alia, draft regulations on the content of applications for approval of plans of work and the procedures relating thereto (see LOS/PCN/L.11). The draft regulations were intended to provide a focus and tool for the deliberations in the Commission. The first part of the draft regulations appeared in document LOS/PCN/SCN.3/WP.6 and was discussed during the third and fourth sessions of the Preparatory Commission, in 1985 and 1986 (see LOS/PCN/L.16, 26 and 32). It has been the understanding since then that it would be redrafted under the responsibility of the Chairman of Special Commission 3 on the basis of the various comments and proposals made thereon. Working paper 6 was revised by the Chairman and issued as document LOS/PCN/SCN.3/WP.6/Rev.1 on 6 June 1988.

2. Working paper 6/Add.2 on the financial terms of contract was discussed in a full first reading during the fourth, fifth and sixth sessions of the Preparatory Commission, in 1986, 1987 and 1988 (see LOS/PCN/L.38, 46, 52 and 59). In the course of the debate, various written amendments were introduced, namely LOS/PCN/SCN.3/WP.9, WP.10, WP.11 and Corr.1 and Add.1, and WP.12. The contents of those amendments were taken into account by the Chairman as fully as possible when revising working paper 6/Add.2 in order to strike a careful balance between all interests concerned.

3. Working paper 6/Add.3 on financial incentives was discussed in a full first reading during the fifth and sixth sessions of the Preparatory Commission, in 1987 and 1988 (see LOS/PCN/L.52 and 59). As was stated in document LOS/PCN/L.59, no suggestions for any appreciable change were made at the first reading. Therefore, the draft articles contained in working paper 6/Add.3 have not been revised by the Chairman. Since the financial incentives are of direct relevance to the financial terms of contract, the texts of both sets of articles have been reproduced in a single document (LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 of 25 May 1989).

4. Working paper 6/Add.4 on transfer of technology until 10 years after commencement of commercial production by the Enterprise was discussed in a full first reading during the sixth and seventh sessions of the Preparatory Commission, in 1988 and 1989 (see LOS/PCN/L.59, 64 and 69). In the course of the debate, various written amendments were introduced, namely LOS/PCN/SCN.3/WP.13, WP.13/Rev.1 and WP.14. The content of those amendments was taken into account by the Chairman as fully as possible when revising working paper 6/Add.4 in order to find a compromise solution to the problems involved. Articles in the present document have, where necessary, been renumbered. The numbers as appearing in WP.6/Add.4 are indicated in parentheses.

5. From the outset, it has been the understanding that the deep-sea-bed mining code will be of a comprehensive nature. This means that users of the code will have only one piece of reference material, i.e. the code, and will therefore have no need to refer to the Convention or to its annexes.

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6. Documents WP.6/Rev.1 and WP.6/Add.2/Rev.1, in which the text of articles 88 and 89 originally contained in WP.6/Add.3 has been incorporated, as well as the present document WP.6/Add.4/Rev.1 are intended by the Chairman to facilitate the work of the Special Commission at its second reading of these working papers. They should be seen as negotiating instruments in which the issues on which there were differences of opinion during the first reading have, in the view of the Chairman, been reduced in number. Revision on the basis of a future second reading should, in principle, further reduce such issues to the smallest possible number and those remaining "hard-core" issues - in the revisions sometimes identified in footnotes added by the Chairman - should then be submitted to final negotiations among all interested delegations.

Article 2 1/

Use of terms

For the purposes of these regulations:

"technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system, and the legal right to use these items for that purpose.

1/ The provisions of this article will be incorporated in an article 2 (see LOS/PCN/SCN.3/WP.6/Rev.1) on the use of terms applying to the complete set of regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area ("deep-sea-bed mining code").

PART VII

TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE

Article 90

Scope of this Part 2/

1. The regulations contained in this Part apply to exploration and exploitation of polymetallic nodules in the Area.

2. The undertakings required by this Part shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production by the Enterprise, and may be invoked during that period.

3. The transfer of the technology shall be on a non-exclusive basis.

4. Without prejudice to the provisions of article 96, the transfer of technology shall, in the case of a joint venture with the Enterprise, be in accordance with the terms of the joint venture agreement.

Article 91 (new)

Assistance to be provided by the contractor in the obtaining of technology by the Enterprise

The contractor shall, during the period mentioned in article 90, paragraph 2, provide assistance to the Enterprise, at its request, in obtaining the same or equally efficient and useful technology on the open market through purchase, licensing or other appropriate agreements or arrangements on fair and reasonable commercial terms and conditions. Such assistance shall include:

(a) Identification of owners, and users, developers and suppliers of such technology known to the contractor;

(b) Evaluation of the technical and economic efficiency of such technology;

(c) Advice on and evaluation of the terms and conditions upon which such technology is offered;

(d) Advice concerning methods by which this technology can be obtained on the commercial terms and conditions most favourable to the Enterprise.

2/ The view was expressed that this Part should also apply to the processing of polymetallic nodules at sea/on land.

/...

Article 92

Undertakings in contracts on transfer of technology which the contractor is legally entitled to transfer

Every contract for carrying out activities in the Area shall contain an undertaking by the contractor to make every effort to make available to the Enterprise, whenever the Council so requests, on fair and reasonable commercial terms and conditions, and in accordance with article 95, the technology which it uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer.

Article 93

Undertakings in contracts on transfer of technology which the contractor is not legally entitled to transfer

1. Every contract for carrying out activities in the Area shall contain undertakings by the contractor that it shall make every reasonable effort:

(a) To obtain a written assurance from the owner of any technology used in carrying out activities in the Area under this contract which is not generally available on the open market and which is not covered by article 92 that the owner will, whenever the Council so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor;

(b) To facilitate, upon the request of the Enterprise, the acquisition of any such technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;

(c) To acquire from the owner, under an enforceable contract, upon the request of the Enterprise and, if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in the Area under the contract which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market.

2. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all reasonable measures have been taken to acquire such a right.

3. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work.

/...

4. The assurance required by paragraph 1 (a) shall be legally binding and enforceable. The document containing this assurance shall be submitted to the Authority along with the application for the approval of the plan of work, and in any case no later than the date of the start of operations under the contract.

5. If the assurance required by paragraph 1 (a) is not obtained and it is established in accordance with the dispute settlement procedures referred to in article 101 that the contractor has not made every reasonable effort to obtain such an assurance, the technology in question shall not be used by the contractor in carrying out activities in the Area.

Article 94 (new)

Procedures for obtaining technology

1. The Enterprise shall make every reasonable effort to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions.

2. In the process of the acquisition of technology, the Enterprise shall, *inter alia*, conduct a survey of potential suppliers, taking into account existing patents and related know-how as may be relevant. It may for these purposes utilize the advisory services of business or trade associations, scientific research institutions and any other appropriate organization, including government agencies.

3. The Enterprise shall issue invitations to tender on the basis of open tender procedures under which all interested suppliers may submit a tender.

4. The technical specifications prescribed in the tender documentation provided to potential suppliers shall be in terms of performance rather than design and shall be based, where appropriate, on international standards. These specifications shall not be prepared or applied in a manner which restricts the range of possible offers of appropriate and efficient technology.

5. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the required technology and provided that words such as "or equivalent" are included in the tender.

6. Any prescribed time-limit shall be adequate to allow potential suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit the Enterprise shall, consistent with its reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail.

7. The Enterprise shall award contracts to bidders offering the best combination of quality, price and delivery time. If there is more than one bid offering such a combination, the contract shall be awarded in accordance with:

/...

(a) The principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency;

(b) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing States, including the land-locked and geographically disadvantaged among them.

8. If the Enterprise concludes that open tendering procedures have not led to a result which meets the requirements of the tender, it shall use single tendering procedures to establish direct contact with individual suppliers.

9. Before the Enterprise concludes that it is unable to obtain the technology on fair and reasonable commercial terms and conditions through the tendering procedures, and if it has not already done so, it shall request contractors to assist it pursuant to article 91 in obtaining such technology on such terms and conditions.

Article 95 (94)

Invocation of the undertakings of the contractor

1. If the efforts of the Enterprise in obtaining technology in accordance with articles 91 and 94 should fail, the Governing Board of the Enterprise may make a finding in accordance with its procedures that the Enterprise is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions.

2. If the Governing Board of the Enterprise makes such a finding, it shall request the Council to invoke the contractor's undertakings. This request shall be accompanied by a report on the efforts made by the Enterprise in accordance with article 94.

3. Upon the receipt of such a request, the Secretary-General shall immediately submit it to the Legal and Technical Commission for consideration and recommendation whether the undertakings should be invoked. The Secretary-General shall inform the Council of such a request.

4. The Legal and Technical Commission shall present its recommendation to the Council within 30 days. The Council shall be deemed to have approved the recommendation of the Legal and Technical Commission after a lapse of 30 days after receipt of the recommendation, unless within that period the Council decides otherwise by consensus.

5. Upon approval by the Council of the recommendation to invoke the undertakings, the Secretary-General shall request that the contractor promptly commence negotiations with the Enterprise to make available to it, on fair and reasonable commercial terms and conditions, the technology which the contractor uses in

carrying out activities in the Area and which it is legally entitled to transfer. Such negotiations shall be completed within 60 days, unless extended by agreement between the parties. The parties shall keep the Council informed of the results of these negotiations.

6. In cases where the Council decides that the undertakings should not be invoked, it may decide on any other appropriate action.

7. In the case of technology which the contractor is not legally entitled to transfer, the Council shall request the contractor either to enter promptly into negotiations with the owner of the technology to carry out the undertakings specified in article 93, paragraph 1 (c), or, if the Enterprise decides to negotiate directly with the owner of the technology in accordance with article 93, paragraph 1 (a) and (b), to facilitate the acquisition of any such technology.

8. The specific agreement between the contractor or the owner of the technology and the Enterprise for the use of such technology shall contain licences and other appropriate arrangements and shall be supplementary to the contract between the Authority and the contractor. The terms of such an agreement shall, if any, include an undertaking by the Enterprise to protect confidential data and information.

Article 96 (95)

Undertakings in contracts with respect to transfer of technology for the benefit of developing States

1. Every contract for carrying out activities in the Area shall contain undertakings by the contractor to take at the request of the Council, *mutatis mutandis*, the same measures as prescribed in articles 92 and 93 for the benefit of a developing State or a group of developing States, whether participating in a joint venture with the Enterprise or not, which has submitted an application for approval of a plan of work for carrying out activities in the part of the area proposed by the contractor and designated by the Council as the reserved area pursuant to Part III, section 2, and Part IV of these regulations.

2. Paragraph 1 does not apply if:

(a) Such activities by the developing State or group of developing States would involve the transfer of technology to a third State or the nationals of a third State; or

(b) Such technology has already been requested by the Enterprise or transferred by the contractor to the Enterprise.

/...

Article 97 (96)

Procedures for obtaining technology by developing States

The procedures for obtaining technology, as set forth in articles 94 and 95, shall apply, mutatis mutandis, to a developing State or a group of developing States.

Article 98 (97)

Limitations on undertakings

1. The regulations contained in this Part shall not be deemed to require a State Party to supply information the disclosure of which is contrary to the essential interests of its security.

2. Where a contractor which is not a State is prohibited by the national law applicable to that contractor because of national security considerations from transferring technology which it uses in carrying out activities in the Area, it shall submit to the Authority a certificate to that effect from the State Party of which it is a national or by which it is effectively controlled.

Article 99 (98)

Notification of revisions

Within 90 days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out activities in the Area, every contractor shall notify the Authority in writing of revisions in the description and information made available pursuant to articles 28 and 29 of these regulations to the Authority of the equipment and methods to be used and other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

Article 100 (new)

Fair and reasonable commercial terms and conditions

The terms and conditions offered by the contractor or the owner of the technology shall be determined to fall within the range of fair and reasonable commercial terms and conditions solely on the basis of the terms and conditions agreed in comparable cases, especially on current market prices for the same or similar technology.

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Article 101 (99)

Disputes concerning a contractor's undertakings [3]

1. In the event of a dispute concerning undertakings referred to in this Part, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means.

2. Disputes as to whether offers made by the contractor or the owner of the technology are within the range of fair and reasonable commercial terms and conditions may be submitted by the contractor or the owner of the technology, by the Council or by the Enterprise to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules.

3. If the finding is that the offer made by the contractor or the owner of the technology is not within the range of fair and reasonable commercial terms and conditions, the contractor or the owner of the technology shall be given 45 days to revise his offer to bring it within that range before the Council takes any decision on the question whether the contractor has violated the terms of the contract.

4. If the contractor is found to be in violation of his undertakings, the Council may, upon recommendation of the Legal and Technical Commission, take such measures as are appropriate.

Article 102 (101)

Consultations of States

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the exploitation of polymetallic nodules, the Council may convene a group of States composed of:

(a) States which are engaged in activities in the Area;

(b) States which have sponsored entities engaged in activities in the Area;

(c) Other States which have access to such technology.

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[3] Provisions on the settlement of disputes and on the penalties to be imposed on contractors violating their undertakings will have to be incorporated at the end of the present draft regulations. Such regulations should be based on Part XV and article 188, paragraph 2 of the Convention and on article 19 of annex III.

2. This group shall consult together and with the Enterprise and each such State shall take appropriate measures within its own legal system to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

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LOS/PCN/SCN.3/WP.6/Add.5
8 February 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eighth session
Kingston, Jamaica
5-30 March 1990

X. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART VIII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM ACTIVITIES IN THE AREA

Working paper by the Secretariat

/...

Article 1

Scope of these regulations*

These regulations apply to the protection and preservation of the marine environment from activities in the Area. 1/

Article 2

Use of terms*

For the purposes of these regulations:

(1) "marine environment" means the physical, atmospheric and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, including the coastline, the waters of the seas and oceans and the airspace above those waters, as well as the sea-bed and ocean floor and subsoil thereof;

(2) "serious harm to the marine environment" means any effect from activities in the Area on the living or non-living components of the marine environment and associated ecosystems beyond that which is negligible or which has been assessed and judged to be acceptable by the Authority pursuant to these regulations and the relevant rules and regulations adopted by the Authority and which represent:

(a) significant adverse changes in the living and non-living components of the marine and atmospheric environment;

(b) significant adverse changes in the ecosystem diversity, productivity and stability of the biological communities within the environment; or

(c) loss of scientific or economic values which is unreasonable in relation to the benefit derived from the activity in question;

(3) "impact reference zones" means areas to be used for assessing the effect of each contractor's activities in the Area on the marine environment and designated in each mining site so as to be:

(a) representative of the environmental characteristics of the site; and

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* The provisions of these articles could form part of Part I (Scope of the regulations and use of terms). For suggested amendments to arts. 5, 9 and 28 of the draft regulations (LOS/PCN/SCN.3/WP.6/Rev.1), see the annex to the present paper.

1/ See art. 209 (1).

/...

(b) located in a portion of the site scheduled to be mined early under the contract;

(4) "preservation reference zones" means areas in which no mining shall occur to ensure representative and stable biota of the sea-bed in order to assess any changes in the flora and fauna of the marine environment.

PART VIII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM ACTIVITIES IN THE AREA

Article 104

General obligation

1. States have the obligation to protect and preserve the marine environment from activities in the Area. 2/

2. They shall co-operate, directly or through competent international organizations, for the purpose of protecting and preserving the marine environment from activities in the Area.

Article 105

Conditions for carrying out activities in the Area

1. Activities in the Area shall only take place if they do not cause serious harm to the marine environment.

2. Activities in the Area shall only take place if:

(a) the technology and procedures are available to provide for safe activities and compliance with paragraph 1;

(b) there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of activities; and

(c) there exists the capacity to respond effectively to accidents, particularly those which might cause serious harm to the marine environment.

3. The Council shall adopt upon recommendation of the Legal and Technical Commission rules and regulations which elaborate the standards contained in article 2, paragraph 2.

2/ Based on art. 192.

Article 106

Exclusion of areas for exploitation

Upon the recommendation of the Legal and Technical Commission, the Council shall exclude areas for exploitation by contractors in cases where substantial evidence indicates the risk of serious harm to the marine environment. 3/

Article 107

Environmental reference zones

1. After the reserved area has been designated in accordance with article 28, 4/ the applicant shall propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones.

2. Upon the recommendation of the Legal and Technical Commission and taking into account the proposal of the applicant, the Council shall, at the time of approving the plan of work, set aside parts of the areas covered by the plan of work to be used exclusively as preservation reference zones and impact reference zones.

Article 108 5/

Procedure for submission of an environmental report or an environmental impact statement

1. Before the Legal and Technical Commission recommends for approval a plan of work for exploration, each applicant shall prepare and submit an environmental report, based on available meteorological, oceanographic and environmental data collected during prospecting, and a programme for oceanographic and baseline environmental studies using:

(a) oceanographic (physical, chemical and biological) data of a general as well as of a site-specific nature using standard techniques;

3/ Based on arts. 165 (2) (l), 162 (2) (x) and Annex III, art. 6 (3) (b).

4/ See LOS/PCN/SCN.3/WP.6/Rev.1.

5/ The Commission may wish to consider whether the provisions of this article should be transferred to art. 29 (Data and information to be submitted by the applicant before final approval of the plan of work) of LOS/PCN/SCN.3/WP.6/Rev.1.

(b) biological data from samples and photographs; 6/

(c) geological data on sediment transport.

2. Before the Legal and Technical Commission recommends for approval a plan of work for exploitation, each applicant shall prepare and submit an environmental impact statement, taking into account the experience gained during the exploration stage.

3. In cases where the application is for the approval of a plan of work for exploration and exploitation, exploitation may not commence before the submission to the Legal and Technical Commission of an environmental impact statement.

Article 109

Environmental impact statement

1. Each environmental impact statement shall be site-specific and shall contain:

(a) data establishing an environmental baseline against which to assess the likely effect of the proposed activities in the Area;

(b) a description of the methods, technology, equipment and procedures to be used;

(c) an assessment of the effects on the marine environment of the proposed activities in the Area, especially of:

(i) the nodule collector in and near the mining tracks;

(ii) the benthic plume on benthic life, and its food supply, away from the mining activity; and

(iii) the surface and mid-water plume on fish larvae.

(d) a contingency plan to respond effectively to serious harm to the marine environment arising from the contractor's activities in the Area;

(e) a plan to minimize to the fullest possible extent in accordance with article 111, paragraph 2, pollution of the marine environment arising from the contractor's activities in the Area; 7/

6/ See LOS/PCN/BUR/R.5, paras. 26, 28, 37 and 38.

7/ Based on art. 194 (3).

(f) a plan to monitor and report on the effects on the marine environment of the contractor's activities in the Area; 8/

(g) a description of the positions, qualifications, experience and availability of qualified persons on whom the applicant will rely to operate installations and equipment in accordance with the plans.

2. Each plan referred to in subparagraphs (d), (e) and (f) of paragraph 1 shall contain a description of the methods, technology and equipment proposed to be used in connection with the plan, the applicant's experience in using it and its reliability.

3. Environmental impact statements shall be made publicly available.

Article 110

Consideration of an environmental report or an environmental impact statement

1. The Legal and Technical Commission shall examine each environmental report or environmental impact statement and plans contained therein. It shall determine, taking into account the analyses and information contained in the applicant's report or statement, whether the exploration or exploitation can reasonably be expected to result in serious harm to the marine environment.

2. If the Legal and Technical Commission finds that an environmental report or environmental impact statement does not comply with these regulations, or is otherwise incomplete or defective, or that the proposed plans do not ensure the effective protection and preservation of the marine environment, it shall notify the applicant. The applicant may submit an amended report or statement to the Legal and Technical Commission within a reasonable time.

3. The Legal and Technical Commission shall make its report and recommendation to the Council on the effects on the marine environment within a reasonable time from the date of receipt of each environmental report or environmental impact statement or from the date of receipt of an amended report or statement.

4. The Legal and Technical Commission may request an independent expert to assess whether all data required by these regulations have been submitted.

5. Upon receiving the Legal and Technical Commission's report and recommendation, the Council shall exclude parts of the application areas for exploitation by contractors in cases where substantial evidence indicates serious harm to the marine environment.

8/ Based on art. 204.

Article 111

Terms and conditions for the protection and preservation of the marine environment

Each contract shall contain provisions for the protection and preservation of the marine environment from activities in the Area including, *inter alia*:

(a) a plan to monitor and report on the effects of the contractor's activities in the Area on the marine environment; 9/

(b) requirements to avoid serious harm to the marine environment that may arise from activities in the Area carried out by the contractor and to minimise to the fullest possible extent the risk of serious harm to the marine environment;

(c) requirements to use where practicable the best available technology for the protection and preservation of the marine environment wherever such activities would cause serious harm to the marine environment;

(d) the specific data and information to be submitted in the contractor's reports on the effect of its activities in the Area on the marine environment; and

(e) a contingency plan to respond effectively to incidents which are likely to cause serious harm to the marine environment arising from the contractor's activities in the Area. 10/

Article 112

Contingency plans

1. Contingency plans shall establish special procedures for dealing with incidents which may result or are about to result in serious harm to the marine environment arising from the contractor's activities in the Area.

2. The contingency plan shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:

(a) the immediate raising of an alarm in the area of the activities;

(b) prompt notification to the Secretary-General;

(c) the warning, as may be necessary, of ships which might be about to enter the immediate vicinity;

9/ Based on art. 204.

10/ Based on art. 199.

(d) a continuing flow of full information relating to particulars of the contingency, measures already taken and further action required, to the Secretary-General;

(e) the removal, as appropriate, of polluting substances;

(f) the reduction and, in so far as possible, prevention of serious harm to the marine environment, as well as mitigation of such effects;

(g) as appropriate, co-operation among contractors to respond to a contingency; and

(h) periodic emergency exercises.

Article 113

Annual reports

1. Each contractor shall submit an annual report on the effects of the contractor's activities in the Area on the marine environment to the Secretary-General within 90 days after the end of each calendar year.

2. Each report shall contain such data and information as shall be specified in the contract and on the basis of relevant rules and regulations.

3. The report shall be made publicly available.

Article 114

Reports of serious harm to the marine environment

1. Each contractor shall promptly report to the Secretary-General any incident arising from its activities in the Area which are likely to cause serious harm to the marine environment.

2. Each such report shall contain the details of such incident, including, *inter alia*:

(a) the co-ordinates of the area affected or which can reasonably be anticipated to be affected;

(b) the effect such incident is likely to have on the flora and fauna, the sea-bed, its subsoil, the sea, the atmosphere and the coastline; 11/

11/ Based on art. 145.

(c) the description of the action being taken to prevent, contain, minimize and repair the serious harm to the marine environment;

(d) a description of the action being taken to monitor the effects of the incidents on the marine environment;

(e) such other information as may be required by the rules and regulations of the Authority.

Article 115

Inspectors 12/

1. Each contractor shall permit the Authority to send its inspectors on board vessels and installations used by the contractor to carry out activities in the Area 13/ in order to:

(a) monitor such activities for compliance with the terms and conditions of the contract and with these regulations concerning the protection and preservation of the marine environment from activities in the Area; and

(b) monitor the effects of such activities on the marine environment.

2. Each contractor shall assist the inspectors in the performance of their duties and provide access to all relevant equipment, facilities and personnel on vessels and installations at all reasonable times.

3. Each inspector shall have reasonable access to the records of any vessel or installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with the safe and normal operations on board vessels and installations used by the contractor to carry out activities in the Area visited and shall act in accordance with measures adopted to protect confidentiality of data and information of commercial value.

5. Inspections carried out by the Authority or by the sponsoring State or States shall be compatible and reinforce each other and shall not impose an undue burden on the operation of vessels and installations visited.

12/ Based on arts. 162 (2) (z), 165 (2) (m) and Annex III, art. 17 (1) (b) (viii).

13/ Based on art. 153.

/...

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to the contractor of, inter alia:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board a vessel or installation; and

(c) activities of the inspector that are likely to require assistance from personnel of the vessel or installation for the use of the equipment of the vessel or installation.

8. The inspectors shall transmit their reports to the Secretary-General.

Article 116

Compliance

1. Each contractor shall take all necessary measures to ensure compliance with its obligations contained in the contract and particularly with the obligations with regard to the protection and preservation of the marine environment from activities in the Area and ensure the avoidance of serious harm to the marine environment including the coastline from activities in the Area and also from disposal of waste, dumping and discharge of sediment, wastes or other effluents into the marine environment.

2. Each contractor shall endeavour to minimize pollution to the fullest possible extent.

Article 117

Obligations of the sponsoring State

1. The sponsoring State has the obligation to inspect at regular intervals to be determined by the Council its contractor's activities in the Area in order to ensure compliance with the rules and regulations of the Authority as well as the terms and conditions of the contract. The sponsoring State shall transmit the reports of its inspectors to the Council.

2. In cases where there are two or more sponsoring States for one contractor, the sponsoring States shall determine which of them has to fulfil the obligation specified in paragraph 1. They shall inform the Council of their decision.

Article 118

Rights and legitimate interests of coastal States

1. Any coastal State which has reason to believe that any activity in the Area by a contractor is likely to cause serious harm to the marine environment in maritime areas under its jurisdiction or sovereignty or its coastline and land territory may notify the Secretary-General and request that he take the necessary action within his competence to prevent serious harm.

2. Upon receipt of such notification, the Secretary-General shall notify the contractor and the sponsoring State or States.

3. Neither these regulations nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII of the Convention or with other relevant international agreements as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area. 14/

Article 119

Emergency orders

1. In the event that the Secretary-General is notified of an incident causing serious harm to the marine environment arising from a contractor's activities in the Area, he shall transmit it immediately to the Council and the Legal and Technical Commission.

2. The Legal and Technical Commission shall meet as soon as possible after having received the report on the serious harm to the marine environment and shall consider, taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the accident and to contain, minimize and repair the serious harm. It shall make relevant recommendations to the Council.

3. After having received the recommendations of the Legal and Technical Commission the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.

4. Taking into account the recommendations of the Legal and Technical Commission the Council may issue emergency orders which may include orders for the suspension

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14/ Based on art. 142 (3).

or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. 15/

5. Pending any action by the Council the Secretary-General may take any immediate measures that may be practical and reasonable in the circumstances to prevent serious harm to the marine environment, including measures to contain, minimize and repair the serious harm.

Article 120

Authority to take measures to protect and preserve the marine environment

If a contractor does not take the action required by the terms and conditions of its contract after having received reasonable notice or does not promptly comply with an emergency order to prevent serious harm to the marine environment arising out of activities in the Area, the Council by itself or through arrangements with others on its behalf may take such reasonable measures as are necessary to prevent and contain, minimise or repair any such harm to the marine environment.

Article 121

Responsibility of the sponsoring State or States

The sponsoring State or States shall, pursuant to article 139 of the Convention, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under the Convention with respect to the protection and preservation of the marine environment from activities in the Area. 16/

Article 122

Liability for serious harm to the marine environment

1. The contractor carrying out activities in the Area shall respond with necessary and timely action, including measures to prevent and contain, minimize and repair, if such activities result in or threaten to result in serious harm to the marine environment.

15/ Based on art. 162 (2) (w) and 165 (2) (k).

16/ Based on Annex III, art. 4 (4).

2. A contractor shall be liable for:

(a) serious harm to the marine environment arising from its activities in the Area, including payment to the Authority in the event that the contractor has not taken adequate action in the opinion of the Council to contain, minimize and repair the serious harm;

(b) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in subparagraph (a); 17/

(c) reimbursement of reasonable costs incurred pursuant to article 120 relating to necessary response action, including measures taken to prevent and contain, minimise and repair where activities of the contractor result in or threaten to result in serious harm to the marine environment of the Area.

3. The contractor shall not be liable pursuant to paragraph 2 if he proves that serious harm to the marine environment has been caused directly by, and to the extent that it has been caused directly by:

(a) an event constituting a natural disaster of an exceptional character which could not reasonably have been foreseen;

(b) armed conflict or an act of terrorism directed against the activities of the contractor, against which no reasonable precautionary measures could have been effective.

4. A sponsoring State shall not be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction. 18/

5. Liability of a contractor for any loss of life, personal injury or loss of or damage to property other than that governed by this article shall be regulated by applicable law and procedures.

6. If a contractor proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that contractor may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

7. Nothing in this article shall be construed so as to:

17/ The Commission may wish to consider whether third parties include juridical or natural persons from non-States parties.

18/ Annex III, art. 4 (4).

(a) preclude the application of existing rules on liability and the development in accordance with international law of further such rules; or

(b) affect the right of a contractor incurring liability pursuant to this article to seek redress from another party which caused or contributed to the damage in question.

8. When compensation has been paid to a third party in respect of an incident referred to in paragraph 2 (b) other than under this Convention, liability in respect of such incident under this Convention shall be offset by the amount of such payment. 19/

9. Any party to a dispute concerning the liability of a contractor for such damage, the amount of compensation or whether such compensation has been paid promptly, may submit the dispute to the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

10. Any final decision rendered by the Chamber or the arbitration tribunal shall be enforceable in the territory of each State party. 20/

Article 123

Penalties

1. A contractor's rights under the contract may be suspended or terminated:

(a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, relating to the protection and preservation of the marine environment from activities in the Area and these regulations or other regulations of the Authority; or

(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body referred to in article 122, paragraph 9.

2. In the case of any violation of the contract not covered by paragraph 1 (a), or in lieu of suspension or termination under paragraph 1 (a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.

19/ The Commission may wish to consider the establishment of a fund in order to ensure that liabilities which are not discharged by contractors are met.

20/ Annex III, art. 21 (2).

3. Except for emergency orders under article 119, the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5, of the Convention. 21/

Article 124

Monitoring programme of the Authority

1. The Legal and Technical Commission shall make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognised scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area. 22/

2. The Council shall consider the recommendations of the Legal and Technical Commission and approve the establishment of a monitoring programme.

3. The Legal and Technical Commission shall ensure that existing regulations are adequate and are complied with and co-ordinate the implementation of the monitoring programme approved by the Council. 23/

Article 125

Data not to be deemed proprietary

Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection and preservation of the marine environment and safety, other than equipment design data, shall not be deemed proprietary. 24/

Article 126

Application of these regulations to the Enterprise

These regulations apply *mutatis mutandis* to the activities of the Enterprise in the Area.

21/ *Ibid*., art. 18.

22/ Based on art. 165 (2) (h).

23/ *Ibid*.

24/ Based on Annex III, art. 14 (2).

/...

Article 127

Rules, regulations and procedures concerning the protection and preservation of the marine environment

The Legal and Technical Commission shall re-examine from time to time, as necessary, the rules, regulations and procedures of the Authority to protect and preserve the marine environment from activities in the Area and make appropriate recommendations to the Council, taking into account the views of recognized experts in that field. 25/

Article 128

Disputes

Disputes concerning the interpretation or application of these regulations shall be submitted to either the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

25/ Art. 209 (1).

/...

Annex

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Rev.1)

1. Add a new subparagraph (d) to article 5 (with the present subparagraph (d) to become subparagraph (e)):

"(d) a description of the state of the environment in the area or areas within which prospecting is to be conducted;"

2. Add to article 9 (3) the following subparagraph:

"(d) observations concerning any harmful effects on the marine environment arising out of the methods, technology, equipment and procedures used during the prospecting period."

3. Add to article 28 (1) (b):

", and a report on the anticipated immediate and long term environmental impact based on available data."

4. Add to article 28 (3) (a):

", and a description and an assessment of the effectiveness of the methods, technology, equipment and procedures to be used to prevent, reduce and control pollution of the marine environment." (art. 194 (1))

LOS/PCN/SCN.3/WP.6/Add.5/Rev.1
27 August 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

XI. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

PART VIII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM UNACCEPTABLE CHANGES RESULTING FROM ACTIVITIES IN THE AREA

Addendum

Preliminary redraft by the Chairman of Special Commission 3 intended to facilitate further consultations, which should provide the basis for a further revision of the working paper*

Article 1

Scope of these regulations

1. These regulations apply to the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area.

2. These regulations apply, inter alia, to:

(a) The prevention, reduction and control of pollution; and

(b) The protection and conservation of the natural resources of the Area.

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* Changes to the original working paper are underscored in the text

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best copy available

Article 2

Use of terms

For the purposes of these regulations:

(1) "marine environment" means the physical, chemical and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, including the coastal area, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof;

(2) "unacceptable changes* to the marine environment" means changes to the marine environment which will result or are resulting from activities in the Area and which are judged unacceptable according to environmental standards recommended by the Legal and Technical Commission and adopted by the Council;

(3) "impact reference zones" means areas to be used for assessing the effect of each contractor's activities in the Area on the marine environment and designated in each mining site so as to be:

(a) representative of the environmental characteristics of the site; and

(b) located in a portion of the site scheduled to be mined early under the contract;

(4) "preservation reference zones" means areas in which no mining shall occur to ensure representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment.

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* It should be noted that the textual changes appearing in the present document, including the introduction of the term "unacceptable changes" in the title and in article 1 and the replacement of the terms "harmful effects" and "serious harm" in subsequent articles as well as the replacement in article 2 of the definition of "serious harm" by a definition of "unacceptable changes", are the preliminary proposals of the Chairman. These changes and all others appearing in the document will be considered in depth during the consultations to be conducted by the Chairman.

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PART VIII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM UNACCEPTABLE CHANGES RESULTING FROM ACTIVITIES IN THE AREA

Article 104

General obligations

1. States have the obligation to protect and preserve the marine environment from unacceptable changes resulting from activities in the Area.

2. They shall cooperate, directly or through competent international organizations, for the purpose of protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area.

3. Each contractor shall take all necessary measures to ensure compliance with its obligations contained in the contract, and particularly with the obligations with regard to the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area, and ensure the avoidance of unacceptable changes to the marine environment from activities in the Area and also from disposal of waste, dumping or discharge of sediment, wastes or other effluents into the marine environment.

4. Each contractor shall endeavour to minimize pollution to the fullest possible extent.

5. In case of an incident causing or threatening to result in unacceptable changes to the marine environment arising from the contractor's activities in the Area, the contractor shall respond with necessary and timely action, including measures to prevent, contain, minimize and repair any such unacceptable changes to the marine environment.

Article 105

Conditions for carrying out activities in the Area

1. Activities in the Area shall not take place if they cause unacceptable changes to the marine environment.

2. Activities in the Area shall not take place if, inter alia:

(a) no adequate technology and procedures to provide for safe activities and compliance with paragraph 1 are available;

(b) no adequate capacity exists to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of activities; and

(c) no adequate capacity exists to respond effectively to accidents, particularly those which might cause unacceptable changes to the marine environment.

Article 106

Exclusion of areas from exploration or exploitation

Upon the recommendation of the Legal and Technical Commission, the Council shall exclude temporarily or permanently areas from exploration or exploitation by contractors in cases where substantial evidence indicates the risk of unacceptable changes to the marine environment.

Article 107

Environmental reference zones

1. After the reserved area has been designated in accordance with article 28, the applicant shall propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones.

2. Upon the recommendation of the Legal and Technical Commission and taking into account the proposal of the applicant, the Council shall, at the time of approving the plan of work, set aside parts of the areas covered by the plan of work to be used exclusively as preservation reference zones and impact reference zones.

Article 108

Procedure for submission of an environmental report or an environmental impact statement

1. Each applicant shall submit an environmental report 45 days prior to submission of a plan of work for exploration or for exploration and exploitation to the Legal and Technical Commission. This report shall be based on available meteorological, oceanographic and environmental data including those collected during prospecting, and a programme for oceanographic and baseline environmental studies using:

(a) oceanographic (physical, chemical and biological) data of a general as well as of a site-specific nature using standard techniques;

(b) biological data from samples and photographs;

(c) geological data on sediment transport and composition.

/...

2. Each applicant shall submit an environmental impact statement 45 days prior to submission of a plan of work for exploitation to the Legal and Technical Commission. In preparing the environmental impact statement, the applicant shall take into account the experience gained during the exploration stage.

3. In cases where the application is for the approval of a plan of work for exploration and exploitation, each applicant shall submit to the Legal and Technical Commission an environmental impact statement 90 days prior to commencement of exploitation.

Article 109

Environmental impact statement

1. Each environmental impact statement shall be site-specific and shall contain:

(a) data establishing an environmental baseline against which to assess the likely effect of the proposed activities in the Area;

(b) a description of the methods, technology, equipment and procedures to be used;

(c) an assessment of the effects on the marine environment of the proposed activities in the Area, especially of:

(i) the nodule collector in and near the mining tracks;

(ii) the sediment plumes on benthic life, and its food supply, away from the mining activity; and

(iii) the sediment plumes, their drifting and their effect on phytoplankton, zooplankton, fish larvae and other biota.

(d) a contingency plan, specified in article 112, enabling the contractor to respond effectively to accidents, especially those with potential unacceptable changes to the marine environment;

(e) a plan to minimize to the fullest possible extent in accordance with article 104, paragraph 4, pollution of the marine environment arising from the contractor's activities in the Area;

(f) a plan to monitor and report on the effects on the marine environment of the contractor's activities in the Area;

(g) a description of the positions, qualifications, experience and availability of qualified persons on whom the applicant will rely to operate installations and equipment in accordance with the plans.

/...

2. Each plan referred to in subparagraphs (d), (e) and (f) of paragraph 1 shall contain a description of the methods, technology and equipment proposed to be used in connection with the plan, the applicant's experience in using it and its reliability.

Article 110

Consideration of an environmental report or an environmental impact statement

1. Upon receipt of an environmental report or environmental impact statement, the Secretary-General shall immediately circulate it to States Parties and make it publicly available.

2. The Legal and Technical Commission shall examine each environmental report or environmental impact statement and plans contained therein. Any State may provide the Legal and Technical Commission with information and comments on the environmental report or environmental impact statement. The Legal and Technical Commission shall determine, taking into account the analyses and information contained in the applicant's report or statement as well as possible information and comments from States Parties, whether the exploration or exploitation can be reasonably expected to result in unacceptable changes to the marine environment.

3. If the Legal and Technical Commission finds that an environmental report or environmental impact statement does not comply with these regulations, or is otherwise incomplete or defective, or that the proposed plans do not ensure the effective protection and preservation of the marine environment, it shall notify the applicant. The applicant may submit an amended report or statement to the Legal and Technical Commission within a reasonable time.

4. The Legal and Technical Commission shall make its report and recommendation to the Council within a reasonable time from the date of receipt of each environmental report or environmental impact statement or from the date of receipt of an amended report or statement.

5. The Legal and Technical Commission may request an independent expert to assess whether all data required by these regulations have been submitted.

6. Upon receiving the Legal and Technical Commission's report and recommendation, the Council may exclude parts of the application areas for exploitation by contractors in cases where substantial evidence indicates unacceptable changes can be caused to the marine environment.

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Article 111

Terms and conditions for the protection and preservation of the marine environment

Each contract shall contain provisions for the protection and preservation of the marine environment from activities in the Area including, *inter alia*:

(a) a plan to monitor and report on the effects of the contractor's activities in the Area on the marine environment;

(b) requirements to avoid unacceptable changes to the marine environment that may result from activities in the Area carried out by the contractor and to minimise to the fullest possible extent the risk of unacceptable changes to the marine environment;

(c) requirements to use the best available technology for the protection and preservation of the marine environment;

(d) the specific data and information to be submitted in the contractor's reports on the effect of its activities in the Area on the marine environment; and

(e) a contingency plan to respond effectively to incidents which are likely to cause unacceptable changes to the marine environment arising from the contractor's activities in the Area.

Article 112

Contingency plans

1. Contingency plans shall establish special procedures for dealing with incidents which have resulted or are about to result in unacceptable changes to the marine environment arising from the contractor's activities in the Area.

2. The contingency plan shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:

(a) the immediate raising of an alarm in the area of the activities;

(b) prompt notification to the Secretary-General and neighbouring coastal States;

(c) the warning, as may be necessary, of coastal States whose waters are likely to be seriously affected or suffer unacceptable changes and ships which might be about to enter the immediate vicinity;

/...

(d) a continuing flow of full information relating to particulars of the contingency, measures already taken and further action required, to the Secretary-General;

(e) neutralization, including the removal, as appropriate, of polluting substances;

(f) the reduction and, in so far as possible, prevention of unacceptable changes to the marine environment, as well as mitigation of such effects;

(g) as appropriate, cooperation among contractors to respond to a contingency; and

(h) periodic emergency exercises.

Article 113

Annual reports

1. Each contractor shall submit an annual report on the effects of the contractor's activities in the Area on the marine environment to the Secretary-General within 90 days after the end of each calendar year.

2. Each report shall contain such data and information as shall be specified in the contract.

3. The report shall be made publicly available.

Article 114

Reports of serious harm to the marine environment

1. Each contractor shall promptly report to the Secretary-General any incident arising from its activities in the Area which are likely to cause unacceptable changes to the marine environment.

2. Each such report shall contain the details of such incident, including, *inter alia*:

(a) the coordinates of the area affected or which can reasonably be anticipated to be affected;

(b) the effect such incident is likely to have on the marine environment;

(c) the description of the action being taken to prevent, contain, minimize and repair the unacceptable changes to the marine environment;

(d) a description of the action being taken to monitor the effects of the incidents on the marine environment;

(e) such other information as may be required by the rules and regulations of the Authority.

Article 115

Inspectors

1. Each contractor shall permit the Authority to send its inspectors on board vessels and installations used by the contractor to carry out activities in the Area in order to monitor the contractor's compliance with the terms and conditions of the contract and with these regulations concerning the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area.

2. Each contractor shall assist the inspectors in the performance of their duties and provide:

(a) information on performance on all relevant equipment, facilities and personnel on vessels and installations;

(b) access, at all reasonable times, to all relevant equipment, facilities and personnel on vessels and installations.

3. Each inspector shall have access to the records of any vessel or installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with the safe and normal operations on board vessels and installations used by the contractor to carry out activities in the Area visited and shall observe the confidentiality of data and information of commercial value in accordance with the rules and regulations adopted by the Authority.

5. Inspections shall not impose an undue burden on the operation of vessels and installations visited.

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to the contractor of, *inter alia*:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board a vessel or installation; and

/...

(c) activities of the inspector that are likely to require assistance from personnel of the vessel or installation to facilitate the performance of his task.

8. The inspectors shall transmit their reports to the Secretary-General who will subsequently transmit them to the sponsoring State.

Article 116 (118)

Rights and legitimate interests of coastal States

1. Any coastal State which has clear grounds for believing that any activity in the Area by a contractor is likely to cause unacceptable changes to the marine environment under its jurisdiction or sovereignty may notify the Secretary-General and request that he take the necessary action within his competence to prevent unacceptable changes.

2. Upon receipt of such notification, the Secretary-General shall notify the contractor and the sponsoring State or States, as well as other States that could be affected, and transmit the notification to the Legal and Technical Commission and the Council.

3. Neither these regulations nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII of the Convention or with other relevant international agreements as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

Article 117 (119)

Emergency orders

1. In the event that the Secretary-General is notified of an incident causing unacceptable changes to the marine environment arising from a contractor's activities in the Area, he shall transmit it immediately to the Council and the Legal and Technical Commission.

2. Pending any action by the Council the Secretary-General may take any immediate measures, which should be practical and reasonable in the circumstances, to prevent unacceptable changes to the marine environment, including measures to contain, minimise and repair the unacceptable changes.

3. The Legal and Technical Commission shall meet as soon as possible after having received the report on the unacceptable changes to the marine environment and shall consider, taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the

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accident and to contain, minimize and repair the unacceptable changes. It shall make relevant recommendations to the Council.

4. After having received the recommendations of the Legal and Technical Commission the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.

5. Taking into account the recommendations of the Legal and Technical Commission the Council may issue emergency orders which may include orders for the suspension or adjustment of operations, to prevent unacceptable changes to the marine environment arising out of activities in the Area.

Article 118 (120)

Authority to take measures to protect and preserve the marine environment

If a contractor does not take the action required by the terms and conditions of its contract after having received an order by the Secretary-General or does not promptly comply with an emergency order to prevent unacceptable changes to the marine environment arising out of activities in the Area, the Council:

(a) shall modify or prohibit the contractor's activities which have resulted or are about to result in unacceptable changes to the marine environment until the contractor undertakes measures referred to in paragraph 5 of article 104;

(b) may take by itself or through arrangements with others on its behalf such measures as are necessary to prevent and contain, minimize or repair any such unacceptable changes to the marine environment.

Article 119 (121)

Responsibility of the sponsoring State or States

1. The sponsoring State or States shall, pursuant to article 139 of the Convention, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under the Convention with respect to the protection and preservation of the marine environment from activities in the Area.

2. The sponsoring State has the obligation to inspect at regular intervals to be determined by the Council its contractor's activities in the Area in order to ensure compliance with the rules and regulations of the Authority as well as the terms and conditions of the contract. The sponsoring State shall transmit the reports of its inspectors to the Council.

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3. In cases where there are two or more sponsoring States for one contractor, the sponsoring States shall determine which of them has to conduct the inspection specified in paragraph 2. They shall inform the Council of their decision.

4. A sponsoring State shall not be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

Article 120 (122)

Liability for causing unacceptable changes to the marine environment

1. A contractor shall be liable for:

(a) unacceptable changes to the marine environment resulting from its activities in the Area, including payment in the event that the contractor has not taken adequate action in the opinion of the Council to prevent and contain, minimize and repair the unacceptable changes;

(b) loss of life or personal injury of a third party or loss of or damage to property of a third party arising out of damage described in subparagraph (a);

(c) reimbursement of reasonable costs incurred pursuant to article 118.

2. The contractor shall not be liable pursuant to paragraph 1 if he proves that unacceptable changes to the marine environment have been caused directly by, and to the extent that they have been caused directly by:

(a) an event constituting a natural disaster of an exceptional character which could not reasonably have been foreseen;

(b) armed conflict or an act of terrorism directed against the activities of the contractor, against which no reasonable precautionary measures could have been effective.

3. If a contractor proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that contractor may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

4. Nothing in this article shall be construed so as to:

(a) preclude the application of existing rules on liability and the development in accordance with international law of further such rules; or

/...

(b) affect the right of a contractor incurring liability pursuant to this article to seek redress from another party which caused or contributed to the damage in question.

5. When compensation has been paid to a third party in respect of an incident referred to in paragraph 1 (b) other than under this Convention, liability in respect of such incident under this Convention shall be offset by the amount of such payment.

6. Any party to a dispute concerning the liability of a contractor for such damage, the amount of compensation or whether such compensation has been paid promptly, may submit the dispute to the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, or to special arbitration in accordance with Annex VIII of the Convention.

7. Any final decision rendered by the Chamber or special arbitration shall be enforceable in the territory of each State party.

Article 121 (123)

Penalties

1. A contractor's rights under the contract may be suspended or terminated only in the following cases:

(a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, relating to the protection and preservation of the marine environment from activities in the Area and these regulations or other regulations of the Authority; or

(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body referred to in article 120, paragraph 6.

2. In the case of any violation of the contract not covered by paragraph 1 (a), or in lieu of suspension or termination under paragraph 1 (a), the Authority may impose upon the contractor monetary penalties.

3. Sanctions determined pursuant to paragraphs 1 and 2 above shall be proportionate to the seriousness of the violation.

4. Except for emergency orders under article 117, the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5, of the Convention.

/...

Article 122 (124)

Monitoring programme of the Authority

1. The Legal and Technical Commission shall make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the effects of activities in the Area on the marine environment, including the risks or effects of pollution.

2. The Commission shall prepare assessments of the environmental implications of activities in the Area, taking into account, inter alia, annual reports of the contractors specified in article 113.

3. The Council shall consider the recommendations of the Legal and Technical Commission and approve the establishment of a monitoring programme.

4. The Legal and Technical Commission shall ensure that existing regulations are adequate and are complied with and coordinate the implementation of the monitoring programme approved by the Council.

Article 123 (125)

Data not to be deemed proprietary

Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection and preservation of the marine environment and safety, other than equipment design data or methods of analysis and monitoring, shall not be deemed proprietary.

Article 124 (126)

Application of these regulations to the Enterprise

These regulations apply mutatis mutandis to the activities of the Enterprise in the Area.

Article 125 (127)

Rules, regulations and procedures concerning the protection and preservation of the marine environment

1. The Council shall adopt, upon the recommendation of the Legal and Technical Commission, rules and regulations which elaborate the principles in article 2, paragraph 2.

/...

2. The Legal and Technical Commission shall re-examine from time to time, as necessary, the rules, regulations and procedures of the Authority to protect and preserve the marine environment from activities in the Area and make appropriate recommendations to the Council in accordance with paragraph 1, taking into account the views of recognized experts in that field.

Article 126 (128)

Disputes

Disputes concerning the interpretation or application of these regulations shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to special arbitration in accordance with Annex VIII of the Convention.

/...

LOS/PCN/SCN.3/WP.6/Add.6
19 December 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Ninth session
Kingston, Jamaica
25 February-22 March 1991

XII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND IN THE MARINE ENVIRONMENT

Working paper by the Secretariat

Introductory note

1. The 1982 Convention on the Law of the Sea has as one of its corner-stones the need to accommodate the various uses of the oceans, especially with respect to areas beyond the limits of national jurisdiction. In particular, it declares that activities in the Area shall be carried out only with reasonable regard for other maritime activities while, in exercising the various freedoms of the high seas States are enjoined to pay due regard to activities in the Area (arts. 87 and 147).

2. The present draft regulations are intended to ensure that activities in the Area and other activities in the marine environment shall be carried out in a manner which does not give rise to conflicts among parties conducting such activities. The draft regulations are based primarily on articles 60 and 147 of the Convention. They also take account of the guidelines and standards proposed by the International Maritime Organization (IMO) for the removal of offshore installations and structures on the continental shelf in the exclusive economic zone.

/...

Article 1

Scope of these regulations

These regulations apply to activities in the Area in relation to other activities in the marine environment. 1/

Article 2

Use of terms 2/

For the purposes of these regulations:

"Installations" includes, unless otherwise specified, artificial islands, platforms, structures, equipment and surface and bottom devices used for carrying out activities in the Area; and vessels when carrying out activities in the Area. 3/

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND IN THE MARINE ENVIRONMENT

Article 129

Reasonable regard for other activities

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. 4/

2. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area. 5/

1/ Article 147.

2/ This article could form part of article 2 (Use of terms) of document LOS/PCN/SCN.3/WP.6/Rev.1.

3/ See articles 1 (1) (5), 60 (1), 194 (3) (c) and 258.

4/ Article 147 (1).

5/ Article 147 (3).

/...

Article 130

Erection and emplacement of installations

1. Stationary or mobile installations used for carrying out activities in the Area shall be erected and emplaced solely in accordance with Part XI of the Convention and subject to the rules, regulations and procedures of the Authority. 6/

2. Such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity. 7/

3. Such installations shall be used exclusively for peaceful purposes. 8/

4. Such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. 9/

Article 131

Identification

Each installation shall bear identification markings, and permanent means for giving warning of its presence must be maintained in accordance with the standards established by the competent international organization and the rules, regulations and procedures of the Authority. 10/

Article 132

Safety zones

1. Safety zones shall be established around installations to ensure the safety of both navigation and the installations. 11/

6/ Article 147 (2) (a).

7/ Article 147 (2) (b).

8/ Article 147 (2) (d).

9/ Article 147 (2) (e).

10/ Articles 60 (3) and 147 (2) (a).

11/ Article 147 (2) (c).

/...

2. The configuration and location of the safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes. 12/

3. The breadth of the safety zones shall be determined by the Enterprise or the contractor taking into account applicable international standards. Such zones shall be of a breadth reasonably related to the nature and function of the installations and shall not exceed a distance of 500 m measured from the outer edge of all parts of the installations, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given to the extent of safety zones. 13/

4. The outside edges of safety zones shall be appropriately marked with buoys conforming to generally accepted international standards or as recommended by the competent international organization so as to ensure the safety of both navigation and the installations.

Article 133

Notice 14/

1. Notice specifying the type, shape, dimensions, position, depth and markings of each installation shall be given to mariners and appropriate hydrographic services taking into account the standards and recommendations of the competent international organization and in accordance with the rules, regulations and procedures of the Authority.

2. Such notice shall be given by the Enterprise or the contractor sufficiently in advance of the erection, emplacement or removal of any installation in the Area to allow for timely revision of nautical charts by appropriate hydrographic services.

Article 134

Removal of installations

1. Any installation which is abandoned or disused shall be removed to ensure safety of navigation, taking into account generally accepted international standards established in this regard by the competent international organization and in accordance with the rules, regulations and procedures of the Authority. 15/

12/ Article 147 (2) (c).

13/ Article 60 (5).

14/ Article 147 (2) (a).

15/ Articles 60 (3) and 147 (2) (a).

2. Such removal shall also have due regard to fishing and the protection of the marine environment, and due regard for the interests of States in the exercise of the freedom of the high seas.[16]

3. Such removal shall be performed as soon as reasonably practicable after abandonment or disuse of the installation.

4. An unobstructed water column sufficient to ensure safety of navigation shall be provided above any partially removed installation which does not project above the surface of the sea.

5. The Enterprise or the contractor shall ensure that the appropriate hydrographic services are notified of the position, depth and dimensions of material from any installation which has not been entirely removed from the sea-bed.

6. The Enterprise or the contractor shall also ensure that advance notice of at least 120 days is issued to advise mariners and appropriate hydrographic services of the change in the status of the installation.

Article 135

Conduct of activities

1. If any party believes that activities in the Area are likely to be carried out or are being carried out without reasonable regard for other activities conducted by that party in the marine environment or if the Enterprise or a contractor believes that other activities in the marine environment are likely to be conducted or are being conducted without reasonable regard for its activities in the Area, it may notify the Secretary-General in writing.

2. The notification shall identify:

(a) the party giving the notification and its activities in the marine environment;

(b) the activities it claims are likely to be conducted or are being conducted without reasonable regard for its activities in the marine environment;

(c) the party which is carrying out these activities.

3. The Secretary-General shall bring each notification to the attention of the competent international organization.

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[16] Articles 60 (3) and 87.

/...

4. After consultation with the Legal and Technical Commission, if the Secretary-General finds that the activities in the Area are likely to be carried out or are being carried out without reasonable regard for other activities in the marine environment, he may notify the Enterprise or the contractor to cease or appropriately modify such activities forthwith or as soon as practicable.

5. In the event of non-compliance with such notification, the Secretary-General, after consultation with the Legal and Technical Commission, shall take such action in accordance with the terms and conditions of any applicable contract and such other action as he deems appropriate under the circumstances in accordance with the rules, regulations and procedures of the Authority.

6. If the Secretary-General finds that other activities in the marine environment are likely to be conducted or are being conducted without reasonable regard for activities in the Area, the Secretary-General may use his good offices with the parties concerned to reach a reasonable accommodation in the circumstances.

Article 136

Consultation and co-operation with other international organizations

The Secretary-General shall consult with other competent international and non-governmental organisations recognized by the Economic and Social Council of the United Nations and co-operate with them with a view to harmonizing regulations governing other activities in the marine environment with regulations governing activities in the Area.

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LOS/PCN/SCN.3/WP.6/Add.6/Rev.1
28 June 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

XIII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND IN THE MARINE ENVIRONMENT

Working paper by the Secretariat as revised by the Chairman*

Article 1

Scope of these regulations

These regulations apply to activities in the Area in relation to other activities in the marine environment. For the purposes of Part IX, activities in the Area shall include prospecting.

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[*] This revised working paper is based on document LOS/PCN/SCN.3/1991/CRP.11 containing amendments agreed in open-ended informal consultations conducted by the Chairman.

Article 2

Use of terms

For the purposes of Part IX:

"Installations" includes, in so far as they are used for carrying out activities in the Area:

(a) vessels and other craft;

(b) platforms, structures, equipment and surface and bottom devices, whether stationary or mobile, including unmanned submersibles;

(c) artificial islands.

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND IN THE MARINE ENVIRONMENT

Article 129

Reasonable regard for other activities

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.

2. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

Article 130

Establishment or use of installations

1. Installations utilized for carrying out activities in the Area shall be erected, emplaced or used solely in accordance with Part XI of the Convention and subject to the rules, regulations and procedures of the Authority, without prejudice to the applicability of generally accepted international rules and regulations relating to collisions at sea and to safety of life at sea.

2. Such installations shall be used exclusively for peaceful purposes.

3. Stationary installations may not be established or used where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

/...

4. Stationary installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 131

Identification

Each installation shall bear identification markings, and permanent means for giving warning of its presence must be maintained in accordance with the standards established by the competent international organization and the rules, regulations and procedures of the Authority.

Article 132

Safety zones

1. Safety zones shall be established, for the purposes of the operations of stationary installations, to ensure the safety of both navigation and installations.

2. The extent, configuration and location of the safety zones shall not be such as to impede the lawful access of ships to particular maritime zones or navigation along international sea lanes.

3. The geographical coordinates of the safety zones shall be fixed by the Enterprise or the contractor taking into account applicable international standards. Such zones shall be of an area reasonably related to the nature and function of the installations.

4. The Authority may apply the provisions contained in the preceding paragraphs to mobile installations whenever appropriate and with such modifications as it deems necessary.

Article 133

Notice

1. Notice specifying the type, shape, dimensions, position, depth and markings of each stationary or mobile installation used for activities of exploration or exploitation and the expected duration of its operations shall be given to mariners and the appropriate hydrographic services taking into account the standards and recommendations of the competent international organisation and in accordance with the rules, regulations and procedures of the Authority. The Enterprise or the contractor shall further give periodic notice, as appropriate, to mariners and the appropriate hydrographic services concerning any changes in positions of installations.

/...

2. Notice specifying the extent, configuration, location and geographical coordinates of safety zones shall be given to mariners and competent international organizations in a manner adequate for ascertaining their position.

3. Notice shall be given by the Enterprise or the contractor sufficiently in advance of the erection, emplacement, use or removal of any installation, and the extent, configuration, location and geographical coordinates of safety zones in the Area, to allow for timely revision of nautical charts by appropriate hydrographic services.

4. The Enterprise or the contractor shall further ensure that the appropriate hydrographic services are notified of the position, depth and dimensions of any fixed or stationary installation which has not been entirely removed from the Area.

5. Copies of the above notices shall be deposited with the Authority.

Article 134

Removal of installations

1. Installations which are no longer in use shall be removed as soon as practicable, to ensure safety of navigation, taking into account generally accepted international standards established in this regard by the competent international organization or organizations and in accordance with the rules, regulations and procedures of the Authority.

2. Such removal shall also have due regard to fishing and the protection of the marine environment, and due regard for the interests of States in the exercise of the freedoms of the high seas.

3. An unobstructed water column sufficient to ensure safety of navigation shall be provided above any partially removed fixed or stationary installation which does not project above the surface of the sea.

4. The Enterprise or the contractor shall also ensure that advance notice of at least 120 days is issued to advise mariners and appropriate hydrographic services of the change in the status of the installation.

Article 135

Procedures of accommodation

1. If any party believes that exploration and exploitation activities in the Area are likely to be carried out or are being carried out without reasonable regard for other activities conducted by that party in the marine environment or if the Enterprise or a contractor believes that other activities in the marine environment are likely to be conducted or are being conducted without

/...

reasonable regard for its activities in the Area, it may notify the Secretary-General in writing.

2. The notification shall identify:

(a) the party giving the notification and a description of its activities and their location in the marine environment;

(b) the activities it claims are likely to be conducted or are being conducted without reasonable regard for its activities in the marine environment;

(c) the party which is carrying out these activities.

3. The Secretary-General shall bring each notification to the attention of the competent international organization.

4. If the Secretary-General finds, after appropriate consultations and technical advice, that the activities of exploration or exploitation in the Area are likely to be carried out or are being carried out without reasonable regard for other activities in the marine environment, he may notify the Enterprise or the contractor to suspend or appropriately modify such activities forthwith or as soon as practicable and shall immediately inform the Council of any action taken. The Enterprise or the contractor may request the Council to review the decision of the Secretary-General taken pursuant to this paragraph, without prejudice to any right of redress under the Convention.

5. In the event of non-compliance with such notification, the Secretary-General shall refer the matter to the Council for appropriate action in the circumstances in accordance with the Convention and the rules, regulations and procedures of the Authority.

6. The contractor or the Enterprise shall report to the Secretary-General on action taken pursuant to paragraphs 4 and 5.

7. If the Secretary-General finds that other activities in the marine environment are likely to be conducted or are being conducted without reasonable regard for activities in the Area, the Secretary-General may offer his good offices to the parties concerned to reach a reasonable accommodation in the circumstances.

LOS/PCN/SCN.3/WP.6/Add.7
19 December 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Ninth session
Kingston, Jamaica
25 February-22 March 1991

XIV. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART X

ACCOUNTING PRINCIPLES AND PROCEDURE

Working paper by the Secretariat

Introductory note

1. Annex III, article 17 (1) (c) (i) requires that the Authority "adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2 (f) (ii), and article 162, paragraph 2 (o) (ii), for ... [the] establishment of uniform and non-discriminatory costing and accounting rules ..."

2. The present draft regulations are based on the accounting procedures now being used by several of the largest petroleum companies engaged in offshore petroleum production in a number of countries in Africa, Asia and South America, and on a model form prepared by the United Nations Centre on Transnational Corporations in 1981. The draft has benefited from the review and suggestions made by specialists with experience in accounting for offshore operations in one of the six largest international accounting firms.

/...

3. The draft regulations establish the parameters for a uniform accounting system. The draft represents an attempt to balance the requirement for uniformity with flexibility to enable each contractor to establish through its own accounting manual and chart of accounts, which are subject to the approval of the Authority, the detailed accounting procedures which best fit its own operations and are consistent with the accounting requirements of its own independent auditors and applicable national legislation.

4. A uniform accounting system is necessary in order "to ensure equality of financial treatment and comparable financial obligations for contractors" under annex III, paragraph 13 (1) (c), and "to ensure optimum revenues for the Authority from the proceeds of commercial production" under annex III, paragraph 13 (1) (a). In this respect, the draft regulations supplement the draft regulations on the financial terms of contract and are necessary to implement them.

5. At the same time, the uniformity of accounting rules will allow the Authority to be able to compare the performances of contractors to ensure that operations are carried out with economy and efficiency so as to ensure optimum revenues and discharge its obligations to supervise operations under annex III, paragraph 17 (1) (b) (viii).

6. The draft regulations also apply, mutatis mutandis, to the Enterprise; this will allow for the comparability of the Enterprise's performance with the performances of contractors so as to ensure that the Enterprise operates in accordance with "sound commercial principles", pursuant to annex IV, paragraph 1 (3).

7. It is recognized that the present draft regulations have been prepared on the basis of experience in offshore petroleum operations, not deep-sea mining operations. But, perforce, offshore petroleum operations offer the best available model for use at this time. Of course, as experience is gained by contractors and the Authority, it will be possible to modify or amend the regulations in accordance with the applicable provisions of the Convention and as required for efficiency and economy.

Article 2

Use of terms*

For the purposes of these regulations:

(1) "Accounting Manual" means a manual, approved by the Authority, containing detailed instructions for internal control procedures, the chart of accounts, the recording of transactions of operations, the preparation of analyses and working papers and the preparation and distribution of financial reports. The Accounting Manual shall include a material classification section with a detailed list of controllable materials;

(2) "Accounting records" means all books of account maintained in accordance with the Accounting Manual, together with all supporting documents, analyses, working papers and reports;

(3) "Controllable materials" means those items of sufficient importance, with respect to value and other factors, to warrant detailed records reflecting acquisition, location and disposition. In this respect, international mining industry practice and a controllable material classification section of the Accounting Manual shall be used for determining controllable materials.

PART X

ACCOUNTING PRINCIPLES AND PROCEDURE

Article 137

Scope of this Part 1/

The regulations contained in this Part provide a uniform system of accounting to record all financial transactions of contractors, to provide a system and standards for handling funds, materials and equipment and to provide the basis for preparing the reports required by these regulations and the contract.

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* The provisions of this article will be incorporated in an article 2 (see LOS/PCN/SCN.3/WP.6/Rev.1) on the use of terms applying to the complete set of regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area ("deep sea-bed mining code").

1/ A3/17 (1) (c) (i).

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Article 138

Accounting principles

1. All costs and expenditures shall be reasonable and necessary, consistent with efficient and economical operations.

2. All books and accounting records shall be kept, and all costs, expenditures, proceeds and revenues determined and recorded, in conformity with generally recognised accounting principles 2/ consistent with practices accepted in the international mining industry and these regulations.

3. The Authority shall from time to time review such principles and practices to ensure that they are generally recognised and consistent with such accepted practices, guided by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between developing and developed countries and other international organizations. 3/

Article 139

Currencies

1. The United States dollar shall be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be translated into United States dollars, unless the Authority shall otherwise agree, at the average of the buying and selling rates quoted for the day the transaction occurred by the International Monetary Fund.

2. Realized foreign currency gains or losses, if any, shall be recorded in a separate account.

Article 140

Accounts and manuals

1. A comprehensive chart of accounts and related account definitions, together with the Accounting Manual for use under the contract, shall be submitted by each contractor for approval by the Authority within 60 days from the effective date of the contract.

2. A complete set of books of account shall be kept at each contractor's principal place of business.

2/ A3/13 (6) (h) (i), (k), (l), (n) (iv) and (v), (7) (b), (11).

3/ A3/13 (9) (b).

Article 141

Accounting for materials and supplies

1. Materials and supplies purchased by the contractor and held solely for use in the contractor's operations under its contract shall be charged at invoice price, less all discounts and rebates, plus actual costs including freight, insurance, duties, fees, handling charges and other costs actually paid to the point of use.

2. Materials and supplies furnished from the contractor's stocks shall be charged as follows:

(a) New material - Condition A: New material transferred from the contractor's warehouse or other properties shall be priced on the basis of the contractor's direct costs and expenses incurred in procuring such new material in accordance with paragraph 1 of this article, the costs of making them suitable for use and the costs of moving the material to the location where the material will be used;

(b) Used material - Condition B: Material which is in sound and serviceable condition and is suitable for reuse without reconditioning shall be classified as Condition B and priced at 75 per cent of the Condition A price;

(c) Used material - Condition C: Material which after reconditioning will be serviceable for the material's original function or is serviceable for its original function but which is substantially not suitable for reuse without reconditioning shall be classified as Condition C and priced at 50 per cent of the Condition A price. The costs for such reconditioning shall be added to the 50 per cent of the Condition A price, provided that the total does not exceed 75 per cent of the Condition A price;

(d) Material which cannot be classified as Condition A, B or C shall be priced at a value commensurate with its use.

3. Each contractor shall keep perpetual accounting records of controllable materials transferred into and out of warehouses and controllable materials in inventory.

4. Subject to paragraph 2 of this article, each contractor shall elect a cash flow assumption for controllable materials which shall be used consistently during the life of the contract and which shall not be changed without the consent of the Authority.

5. Subject to paragraphs 2 and 4 of this article, each contractor shall use the methods prescribed in the Accounting Manual for computing the unit cost of controllable materials.

6. At the request of the Authority, each contractor shall furnish reports and lists of all the controllable material in inventory to the Authority.

7. Each contractor shall conduct, once a year, if feasible, or upon the request of the Authority, a physical inventory of the controllable materials which it maintains.

8. Each contractor shall give written notice, if feasible, to the Authority and to the accountants 60 days before each physical inventory date to allow time for their participation.

9. The gain or loss resulting from the physical inventory shall be reflected in the perpetual accounting records and the appropriate operating account. If the gain or loss is significant, the contractor shall compile a list of the gains and losses and attach to it reasonable explanations for the differences. This report shall be submitted to the Authority for approval. For purposes of this paragraph, significant gain or loss means any total inventory adjustment exceeding one per cent of the total dollar value of inventory before adjustment.

Article 142

Accounting for equipment [4]

1. Equipment purchased by the contractor and capitalised as a physical asset shall be charged *mutatis mutandis* in accordance with article 141.

2. Each contractor shall conduct, every five years or upon the request of the Authority, a physical inventory of capitalised physical assets.

3. Each contractor shall give written notice to the Authority and to the accountants 60 days before each physical inventory date to allow time for their participation.

4. The gain or loss resulting from a physical inventory shall be reflected in the perpetual accounting records and the appropriate capital account. If the gain or loss is significant, the contractor shall compile a list of the gains and losses and attach to it reasonable explanations for the differences. This report shall be submitted to the Authority for approval. For purposes of this paragraph, significant gain or loss means any total inventory adjustment exceeding one per cent of the total dollar value of physical assets before adjustment.

Article 143

Personnel costs

1. Personnel costs which are directly incurred in operations under a contract shall include the gross salaries, wages, bonuses and premiums paid to the

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[4] See A3/13 (6) (m).

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contractor's employees and the expenses or contributions, if any, incurred or made pursuant to assessments or obligations applicable to such costs imposed by a Government.

2. Costs for holiday, vacation, sickness and disability payments applicable to salaries and wages, together with other employee benefits such as group life and medical insurance, pension and savings plans, shall be charged in accordance with the standards and procedures of the Accounting Manual.

3. Travel and subsistence costs of personnel shall be charged in accordance with the standards and procedures of the Accounting Manual.

Article 144

Charges for training programmes for personnel of the Authority and developing States [5]

The costs for the training of personnel of the Authority and developing States, including the participation of such personnel in the contractor's activities in the Area which is covered by the contract, shall be charged in accordance with the terms and conditions of the contract and the standards and procedures specifically agreed by each contractor with the Authority.

Article 145

Charges for transfer of data to the Authority [6]

Costs for the transfer of data by the contractor to the Authority in respect of the Area covered by the contract shall be charged in accordance with the terms and conditions of the contract and the standards and procedures specifically agreed by each contractor and the Authority.

Article 146

Charges for third-party contracts

The actual direct costs of contracts for technical and other services supplied by third parties shall be charged, provided that such costs are reasonable and necessary and are not higher than those generally charged for comparable work and services.

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[5] A3/15.

[6] A3/14.

Article 147

Charges for affiliates

Charges for transactions with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor, for services, materials, equipment and other costs, shall be at actual cost on the basis of arm's length prices and such other terms and conditions as would have applied in a normal commercial manner in the ordinary course of business had the transaction occurred between unrelated parties or if the parties were not in any special relationship.[7]

Article 148

Rental payments

Rental payments, except for land, included in the contractor's development costs, development costs of the mining sector and the contractor's operating costs shall be charged only to the extent that the present value of any capitalized lease obligations are included in the debt-equity ratio approved by the Authority, and to the extent that the interest rates have been found reasonable by the Authority having regard to existing commercial practices in accordance with article 78.[8]

Article 149

Insurance costs and losses

Actual net premiums for insurance and the deductible portion of insured losses and losses not covered by insurance shall be charged unless such losses result from the gross negligence or wilful misconduct of the contractor.

Article 150

Legal costs

The direct costs of legal services necessary or expedient for the protection of the contractor's interests under the contract may be charged, to the extent that they are fair and reasonable, as part of the contractor's development costs, development costs of the mining sector and the contractor's operating costs, provided such costs were incurred after the effective date of the contract.

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[7] See A3/[illegible]

[8] See LOS/PCN/SC[illegible]

/...

Article 151

Overhead and administrative costs

1. Administrative costs incurred after the effective date of the contract specifically and solely related to operations under the contract for personnel performing supervisory, accounting, employee relations, computer services, purchasing, engineering, tax, administrative and management functions and related office costs shall be charged as development costs or operating costs.

2. Overhead costs not included in paragraph 1 incurred after the effective date of the execution of the contract shall be charged as follows:

(a) _____ per cent of development costs;

(b) _____ per cent of operating costs. [9]

3. The salaries, wages and expenses of technical employees directly employed in operations under the contract shall not be included in the overhead costs provided in paragraph 2 but shall be charged directly.

4. Overhead costs incurred in connection with action taken to contain, minimise and repair serious harm to the marine environment, or as a consequence of an explosion, fire, storm, hurricane or other catastrophe, which are necessary to restore plant and equipment to the equivalent condition that existed prior to such catastrophe, not attributable to the contractor's negligence or failure to use good mining industry practice, shall be charged as follows:

(a) _____ per cent of total costs up to and including $1 million;

(b) _____ per cent of total costs above $1 million but not more than $10 million;

(c) _____ per cent of total costs above $10 million.

5. The rates provided in paragraphs 2 and 3 may be amended from time to time by agreement of the contractor and the Authority if, in practice, the rates are found to be excessive or insufficient.

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[9] Consideration could be given to using a downward sliding scale, e.g., four per cent on the first $10 million, three per cent between $10 and 50 million, two per cent between $50 and 100 million, one per cent thereafter.

Article 152

Credits

The net proceeds of the following transactions shall be credited to the accounts under the contract:

(a) The proceeds of any insurance or claim in connection with the operations under the contract or any assets charged to the accounts under the contract when such operations or assets were insured and the premium charged to the accounts under the contract;

(b) Revenue received from third parties for the use of property or assets charged to the accounts under the contract;

(c) Any adjustment received by the contractor from suppliers or manufacturers or their agents in connection with defective material the costs of which was previously charged by the contractor to the accounts under the contract;

(d) Rentals, refunds or other credits received by the contractor which apply to any charge which has been made to the accounts under the contract.

Article 153

Duplication of costs, charges and credits

Notwithstanding any provision to the contrary, there shall be no duplication of costs, charges and credits under any contract between a contractor and the Authority.

Article 154

Financial reports

1. Each contractor shall prepare quarterly and annual financial reports of the books of accounts in accordance with this Part and the Accounting Manual.

2. Each report shall consist of a profit-and-loss statement, a balance sheet, a statement of cash flow and a schedule or accrued accounts receivable and payable. The annual report shall also include an analysis of physical inventory gains and losses. Each annual report shall be accompanied by a projected or forecast budget profit-and-loss statement for the following year.

3. The form and contents of the reports shall be prescribed by the Authority or otherwise shall be in accordance with the Accounting Manual.

4. Each report submitted by the contractor to the Authority shall be a full and accurate accounting report for the period covered.

/...

5. Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter.

6. Each annual report shall be audited and shall be sent to the Authority within 90 days after the end of each calendar year.

7. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report and within five years of the date of submission of an annual report.

8. In the event that the Authority does not make any comment or propose adjustments to any report within such period, the report shall be considered final and conclusive except for adjustments resulting from physical inventories or audits conducted by the accountants.

Article 155

Inspection and audit

1. An annual audit shall be carried out by the accountants at the cost of the contractor. Additional audits by the accountants shall be carried out at the request of the Authority at the Authority's cost.

2. The accountants shall have access to all accounting records. The accountants may examine and verify, and confirm with third parties, including those referred to in article 147 of these regulations, at all reasonable times, all charges and credits relating to the contract, including books of account, records, accounting entries, inventory vouchers, pay-rolls, invoices and any other documents, correspondence and records reasonably necessary to audit and verify the charges and credits and the contractor's statements and reports. For that purpose, the accountants may copy or make extracts from such documents, correspondence or records.

3. The accountants shall have the right to visit and inspect, at all reasonable times, all installations, facilities, plants, warehouses, offices, places of business and sites of the contractor, directly or indirectly used in connection with the contract.

4. Each contractor shall instruct its employees, agents and representatives to co-operate in any such visit and examination and to answer and provide explanations for any relevant questions and requests made by the accountants in the course of their examination and verification.

5. The Authority shall have the right to designate personnel to participate in any such audit.

/...

6. The accountants shall conduct an audit in a reasonable manner and make every reasonable effort to minimize the inconvenience to the contractor.

7. The accountants shall complete each annual audit within 120 days from the end of each calendar year and give the Authority a report of the results of its audit.

Article 156

Retention of books, records and documents

1. All books, records and documents referred to in article 155 shall be maintained for not less than seven years from the date of issue.

2. Documentation in connection with any adjustment proposed by the Authority pursuant to article 154 shall be maintained until the matter has been finally resolved.

Article 157

Application of these regulations to the Enterprise

These regulations apply *mutatis mutandis* to the activities of the Enterprise in the Area.

LOS/PCN/SCN.3/WP.6/Add.7/Corr.1
8 February 1991

ARABIC, CHINESE, ENGLISH,
RUSSIAN AND SPANISH ONLY

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Ninth session
Kingston, Jamaica
25 February-22 March 1991

XV. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART X

ACCOUNTING PRINCIPLES AND PROCEDURES

Working paper by the Secretariat

Corrigendum

1. The title of document LOS/PCN/SCN.3/WP.6/Add.7 should read as above.

2. Page 2, paragraph 4

Line 3: *for* paragraph 13 (1) (c) *read* article 13 (1) (c)

Line 4: *for* paragraph 13 (1) (a) *read* article 13 (1) (a)

3. Page 2, paragraph 5

Line 5: *for* paragraph 17 (1) (b) (viii) *read* article 17 (1) (b) (viii)

/...

4. Page 2, paragraph 6

   Line 5: for paragraph 1 (3) read article 1 (3)

5. Page 3, article 2, subparagraph (1)

   Line 3: delete of operations

6. Page 3, Title of PART X should read

   ACCOUNTING PRINCIPLES AND PROCEDURES

7. Page 10, article 154, paragraph 2

   Line 2: for or accrued read of accrued

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LOS/PCN/SCN.3/WP.6/Add.7/Corr.2
31 July 1991

ORIGINAL: ENGLISH

**PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
New York, 12-30 August 1991**

XVI. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART X

ACCOUNTING PRINCIPLES AND PROCEDURES

Working paper by the Secretariat

Corrigendum

1. Page 4, article 139, paragraph 1

For the existing text substitute

1. The United States dollar shall be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be translated into United States dollars, unless the Authority shall otherwise agree, at the average of the buying and selling rates quoted by the International Monetary Fund for the day when payment is made.

2. Pages 10 and 11, article 154, paragraphs 1 to 8

For the existing text substitute

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Article 154

Financial reports

1. Each contractor shall prepare quarterly and annual financial reports of the books of accounts in accordance with this Part and the Accounting Manual.

2. Each report shall consist of a profit-and-loss statement, a balance sheet, a statement of sources and use of funds and a schedule of accrued accounts receivable and payable. The annual report shall also include an analysis of physical inventory gains and losses. Each annual report shall be accompanied by a projected or forecast budget profit-and-loss statement for the following year.

3. The form and contents of the reports shall be prescribed by the Authority or otherwise shall be in accordance with the Accounting Manual.

4. Each report submitted by the contractor to the Authority shall give a true and fair view of the financial position, performance and changes in financial position.

5. Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter.

6. Each annual report shall be sent to the Authority within 60 days after the end of each calendar year.

7. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report and within five years of the date of submission of an annual report.

8. In the event that the Authority does not make any comment or propose adjustments to any report within such period, the report shall be considered final and conclusive except for adjustments resulting from physical inventories or audits conducted by the accountants.

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LOS/PCN/SCN.3/WP.6/Add.8
11 February 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Tenth session
Kingston, Jamaica
24 February-13 March 1992

XVII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART XI

LABOUR, HEALTH AND SAFETY STANDARDS

Working paper by the Secretariat

Article 1

Scope of these regulations*

These regulations apply to the labour, health and safety standards for carrying out activities in the Area.

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* The draft regulations on labour, health and safety standards dealing with obligations and responsibilities of the sponsoring State, liability, penalties, application to the Enterprise, review of rules, regulations and procedures and disputes settlement will be harmonised with those applying to other parts of the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area, particularly to part VIII (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

/...

PART XI

LABOUR, HEALTH AND SAFETY STANDARDS

Article 158

Protection of workers

1. Activities in the Area shall be carried out under conditions which ensure that the workers employed in such activities are afforded adequate protection in the fields of occupational safety and health, labour relations, conditions of work, social security, employment security and living conditions at the work site, in accordance with the rules, regulations and procedures of the Authority.

2. In establishing such rules, regulations and procedures the Authority shall, as appropriate, consult with competent international organizations.

Article 159

Discrimination

Equality of opportunity and treatment in respect of employment and occupation shall not be denied to workers on the ground of race, colour, sex, religion, political opinion, national extraction or social origin.

Article 160

Safety of life at sea 1/

1. Each contractor shall comply with the applicable international regulations concerning the safety of life at sea and the prevention of collisions and the rules, regulations and procedures of the Authority.

2. Each vessel used for carrying out activities in the Area shall:

(a) Possess current valid certificates issued under relevant international conventions for safety of life at sea to which the vessel's flag State is a party; or

(b) If the vessel's flag State is not a party to such conventions, meet all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies.

1/ Article 146, A3/17(1)(b)(xii).

Article 161

Safety of installations 2/

Each contractor shall ensure that:

(a) Installations used for carrying out activities in the Area shall at all times be kept in a safe and proper condition in compliance with the applicable international regulations concerning the safety of life at sea and the rules, regulations and procedures of the Authority;

(b) Installations shall:

(i) Be designed, equipped, constructed and operated with proper regard for the safety of personnel;

(ii) Have satisfactory access and evacuation facilities;

(iii) Be adequately equipped with effective fire-fighting and rescuing equipment;

(iv) Be equipped with telecommunications for necessary communication;

(c) Planning of new installations and new equipment, and modifications of existing installations and equipment, shall give consideration to equipment currently available and new technology as necessary, thereby maintaining a safety level concurrent with technological development.

Article 162

Safety contingency plans 3/

1. Each contractor shall prepare safety contingency plans for installations used for carrying out activities in the Area. Such plans shall be submitted in writing for the Authority's approval prior to the operation of any such installation. The contingency plans shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:

2/ The term "installations" is defined in the draft regulations on accommodation of activities in the Area to include vessels (LOS/PCN/SCN.3/WP.6/Add.6/Rev.1, art. 2).

3/ See article 112 of the draft regulations for the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

(a) The immediate raising of alarm in the area of the activities;

(b) The rescue of persons;

(c) Prompt notification to the Secretary-General and, where appropriate, neighbouring coastal States;

(d) A continuing flow of full information, relating to particulars of the contingency measures already taken and further action required, to the Secretary-General;

(e) As appropriate, cooperation among contractors to respond to a contingency; and

(f) Periodic and regulation drills and exercises to ensure that all required installations, facilities, equipment, materials and supplies are in proper working order and that the contractor's personnel have been properly trained in their uses.

2. Each contractor shall ensure that workers employed in carrying out activities in the Area are thoroughly familiar with such plans and are properly qualified and have adequate training and practice in carrying them out.

3. Each contractor shall send to the Secretary-General, within thirty days before the end of each calendar year, a certificate signed by its chief executive officer confirming that all required installations, facilities, equipment, materials and supplies are in place and in proper working order, and that the contractor's personnel have been properly trained in their use.

4. In the event that the Secretary-General finds that any such certificate is false or misleading in any material respect, he shall refer the matter to the Legal and Technical Commission. If the Commission determines that any such certificate is false or misleading in any material respect, it may recommend that the Council take action in accordance with the rules, regulations and procedures of the Authority.

Article 163

Annual reports 4/

1. Each contractor shall submit an annual report on the labour, health and safety standards relating to its activities in the Area to the Secretary-General within ninety days after the end of each calendar year.

4/ This article could be combined with article 113 of the draft regulations on the marine environment (ibid).

2. Each report shall contain data and information on any incident significantly affecting the health or safety of workers and any dispute or complaint concerning the terms and conditions of work applicable to workers employed in carrying out activities in the Area.

3. The reports shall be made publicly available.

Article 164

Reports of serious harm [5]

1. Each contractor shall promptly report to the Secretary-General any incident or immediate threat thereof arising from its activities in the Area which is likely to affect seriously the safety of human life.

2. Each report shall contain the details of such incident, a description of the action taken and other information as may be required by the relevant rules, regulations and procedures.

Article 165

Emergency orders [6]

1. In the event that the Secretary-General receives notification of an emergency which is likely to cause serious personal injury or loss of human life arising from a contractor's activities in the Area, he shall transmit it immediately to the Council and the Legal and Technical Commission.

2. Pending any action by the Council, the Secretary-General may take any immediate measures which should be practical and reasonable in the circumstances to ensure the effective protection of human life.

3. The Legal and Technical Commission shall meet as soon as possible after having been notified and shall consider, taking into account the measures already taken by the contractor and by the Secretary-General, which measures are necesary for the effective protection of human life. It shall make relevant recommendations to the Council.

4. After having received the recommendations of the Legal and Technical Commission, the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.

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[5] This article could be combined with article 114 of the draft regulations on the marine environment.

[6] See article 117 of the draft regulations on the marine environment.

5. Taking into account the recommendations of the Legal and Technical Commission, the Council may issue emergency orders which may include orders for the suspension of adjustment of operations to ensure the effective protection of human life.

/...

LOS/PCN/SCN.3/WP.6/Add.8/Corr.1
25 February 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Tenth session
Kingston, Jamaica
24 February-13 March 1992

XVIII. DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART XI

LABOUR, HEALTH AND SAFETY STANDARDS

Working paper by the Secretariat

Corrigendum

At the end of the document add the following article:

Article 166

Inspectors

1. Each contractor shall permit the Authority to send its inspectors on board installations used by the contractor to carry out activities in the Area in order to monitor the contractor's compliance with the terms and conditions of the contract and these regulations concerning the labour, health and safety aspects of carrying out activities in the Area.

2. Each contractor shall assist the inspectors in the performance of their duties and provide:

(a) Information on performance on all relevant equipment, facilities and personnel on installations,

/...

(b) access, at all reasonable times, to all relevant equipment, facilities and personnel on installations.

3. Each inspector shall have access to the records of any installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with safe and normal operations on installations.

5. Inspections shall not impose an undue burden on the operation of installations visited.

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to he contractor of, inter alia:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board an installation; and

(c) activities of the inspector that are likely to require the assistance from personnel of the installation to facilitate the performance of his tasks.

8. The inspectors shall transmit their reports to the Secretary-General who will subsequently transit them to the sponsoring State.

/...

LOS/PCN/SCN.3/1992/CRP.17/Corr.1
29 March 1993

ARABIC, CHINESE, ENGLISH, FRENCH
AND SPANISH ONLY

**PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993**

Draft final report of Special Commission 3

Corrigendum

Page 14, paragraph 65, sixth line

For LOS/PCN/1992/CRP.15 *read* LOS/PCN/1992/CRP.16

/...

LOS/PCN/SCN.3/1993/CRP.17/Add.1
15 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

DRAFT FINAL REPORT OF SPECIAL COMMISSION 3

Addendum

Explanatory note

1. The present addendum contains document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1, which is the revision of document LOS/PCN/SCN.3/WP.6/Add.8 dealing with labour, health and safety standards. At the time of publication of the draft final report of Special Commission 3, a revised text of the document had not been agreed upon by all participating delegations. Consensus was reached on a revised text during the further consultations held at the New York session of the Preparatory Commission in August 1992. The revised text was endorsed by the Special Commission and it is being issued pursuant to the statement to the plenary by the Chairman of Special Commission 3 (see LOS/PCN/L.106, para. 4).

2. This addendum also includes the documents of Special Commission 3 containing proposals for amendments submitted by various States and interest groups to the Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

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1. Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6). Proposal by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland (LOS/PCN/SCN.3/WP.7) 253

2. Explanatory table showing the contractor's financial obligations to the Authority. Submitted by the delegation of Saudi Arabia (LOS/PCN/SCN.3/WP.8) 254

3. Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6/Add.2). Proposals by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland (LOS/PCN/SCN.3/WP.9) 256

4. Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6/Add.2). Proposals by the delegations of Denmark and Norway (LOS/PCN/SCN.3/WP.10) 261

5. Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6/Add.2). Proposals by the Group of 77 (LOS/PCN/SCN.3/WP.11) 263

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I. LABOUR, HEALTH AND SAFETY STANDARDS

/...

LOS/PCN/SCN.3/WP.6/Add.8/Rev.1
15 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA*

PART XI

LABOUR, HEALTH AND SAFETY STANDARDS

Working paper by the Secretariat

Article 1

Scope of these regulations**

These regulations apply to the labour, health and safety standards for carrying out activities in the Area.

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* Changes to the original working paper are underscored in the text.

** The draft regulations on labour, health and safety standards dealing with obligations and responsibilities of the sponsoring State, liability, penalties, application to the Enterprise, review of rules, regulations and procedures and disputes settlement will be harmonized with those applying to other parts of the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area, particularly to part VIII (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

/...

Article 158

Non-discrimination and protection of workers

1. Activities in the Area shall be carried out under such conditions that the workers employed in such activities are afforded adequate protection against discrimination in employment on the ground of race, colour, sex, religion, political opinion, national extraction or social origin, as well as in the fields of occupational safety and health, labour relations including freedom of association, conditions of work, social security, employment security and living conditions at the work site.

2. The Authority shall establish rules and regulations in the fields referred to in paragraph 1 drawing in particular upon conventions and recommendations of the International Labour Organisation and other competent international organizations after consulting, as appropriate, the International Labour Organisation and other competent international organizations. These rules and regulations shall be reviewed periodically.

3. Each contractor shall, in carrying out activities in the Area, observe and comply with the rules and regulations established by the Authority in accordance with paragraph 2, without prejudice to applicable national legislations establishing higher standards of protection for workers.

Article 159

Discrimination

Deleted.

Article 160

Safety of vessels [1]

1. The Council, in consultation with the competent international organization, shall establish:

(a) A list of applicable rules and regulations of the competent international organization concerning the safety of vessels, including the safety of life at sea and the prevention of collisions.; and

(b) Additional rules, regulations and procedures, if deemed necessary.

2. Each contractor shall comply with rules and regulations referred to in paragraph 1.

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[1] Art. 146, A3/17(1)(b)(xii).

3. Each vessel used for carrying out activities in the Area shall:

(a) Possess current valid certificates issued under relevant international conventions for safety of life at sea to which the vessel's flag State is a party; or

(b) If the vessel's flag State is not a party to such conventions, meet all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies.

Article 161

Safety of installations 2/

Each contractor shall ensure that:

(a) Installations used for carrying out activities in the Area shall at all times be kept in a safe and proper condition in compliance with the applicable international regulations concerning the safety of life at sea and the rules, regulations and procedures of the Authority;

(b) Installations shall:

(i) Be designed, equipped, constructed and operated with proper regard for the safety of personnel and protection of the marine environment;

(ii) Have satisfactory access and evacuation facilities;

(iii) Be adequately equipped with effective disaster response, fire-fighting and rescuing equipment;

(iv) Be equipped with telecommunications for necessary communication;

(c) Planning of new installations and new equipment, and modifications of existing installations and equipment, shall give consideration to equipment currently available and new technology as necessary, thereby maintaining a safety level concurrent with technological development.

2/ The term "installations" is defined in the draft regulations on accommodation of activities in the Area to include vessels (LOS/PCN/SCN.3/WP.6/Rev.1, art. 2).

/...

Article 162

Safety contingency plans 3/

1. Each contractor shall prepare safety contingency plans for installations used for carrying out activities in the Area. Such plans shall be submitted in writing for the Authority's approval prior to the operation of any such installation. The contingency plans shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:

(a) The immediate raising of alarm in the area of the activities;

(b) The rescue of persons;

(c) Immediate notification to the Secretary-General and, where appropriate, neighbouring coastal States;

(d) A continuing flow of full information, relating to particulars of the contingency measures already taken and further action required, to the Secretary-General;

(e) As appropriate, cooperation among contractors to respond to a contingency; and

(f) Periodic and regulation drills and exercises to ensure that all required installations, facilities, equipment, materials and supplies are in proper working order and that the contractor's personnel have been properly trained in their uses.

2. Each contractor shall ensure that workers employed in carrying out activities in the Area are thoroughly familiar with such plans and are properly qualified and have adequate training and practice in carrying them out.

Article 163

Annual reports

Deleted.

3/ See article 112 of the draft regulations for the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

/...

Article 164

Notification and reports of incidents 4/

1. Each contractor shall immediately notify the Secretary-General of any incident or immediate threat thereof arising from its activities in the Area, including any incident relating to vessels or installations, which affects or is likely to affect seriously the safety of human life and of installations.

2. The contractor shall promptly submit to the Secretary-General a report containing the details of such incident, including, inter alia:

(a) the location of the incident;

(b) the effect such incident has had and is likely to have on the safety of human life, including the nature and extent of any injuries sustained;

(c) the description of the action being taken to prevent, contain, minimize and remedy any harm incurred; and

(d) other information as may be required by the relevant rules, regulations and procedures.

Article 165

Emergency orders 5/

1. In the event that the Secretary-General receives a notification in accordance with article 164, paragraph 1, he shall transmit it immediately to the Council and the Legal and Technical Commission.

2. Pending any action by the Council, the Secretary-General may take any immediate measures which should be practical and reasonable in the circumstances to ensure the effective protection of human life and the safety of installations. Any such measures shall be effective until action is taken by the Council in accordance with paragraphs 4 and 5 or for an initial period of 15 days.

3. The Legal and Technical Commission shall meet as soon as possible after having been notified and shall consider, taking into account the measures already taken by the contractor and by the Secretary-General, which measures are necesary for the effective protection of human life. It shall make relevant recommendations to the Council.

4/ This article could be combined with article 114 of the draft regulations on the marine environment (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

5/ See article 117 of the draft regulations on the marine environment (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

/...

4. After having received the recommendations of the Legal and Technical Commission, the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.

5. Taking into account the recommendations of the Legal and Technical Commission, the Council may issue emergency orders which may include orders for the suspension of adjustment of operations to ensure the effective protection of human life.

6. Within the period specified in paragraph 2 the contractor shall provide information pursuant to paragraph 2 (c) of article 164.

7. If within the period specified in paragraph 2 the Council has not taken action in accordance with paragraphs 4 and 5, the Secretary-General shall consider the information provided and make a decision as to whether the measures referred to in paragraph 1 shall remain in effect. If the Secretary-General decides that these measures shall remain in effect, they shall be effective until action is taken by the Council in accordance with paragraphs 4 and 5 but in any event not longer than 30 days after the Secretary-General has taken initial measures under this article.

8. The contractor may also request the Council to review any decision of the Secretary-General taken pursuant to this article, without prejudice to any right of redress under the Convention.

Article 165 (bis)

Inquiries into incidents

1. The Council may establish an inquiry into the causes and circumstances surrounding any incident in which there has been serious personal injury or loss of human life. Any such inquiry shall be conducted by the Legal and Technical Commission.

2. Upon receipt of the findings of the Legal and Technical Commission the Council shall take appropriate measures and shall make its report publicly available.

Article 166 [6]

Inspection

1. Each contractor shall permit the Authority to send its inspectors on board installations used by the contractor to carry out activities in the Area

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[6] It was suggested by some delegations that all references to inspectors found in separate parts of the mining code should be included in one chapter and that its wording should be general so as to cover various situations.

in order to monitor the contractor's compliance or to investigate in accordance with rules established by the Authority complaints alleging non-compliance with the terms and conditions of the contract and these regulations concerning the labour, health and safety aspects of carrying out activities in the Area.

2. Each contractor shall assist the inspectors in the performance of their duties and provide:

(a) Information on performance on all relevant equipment, facilities and personnel on installations,

(b) Access, at all reasonable times, to all relevant equipment, facilities and personnel on installations.

3. Each inspector shall have access to the records of any installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with safe and normal operations on installations.

5. Inspections shall not impose an undue burden on the operation of installations visited.

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to the contractor of, inter alia:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board an installation; and

(c) activities of the inspector that are likely to require the assistance from personnel of the installation to facilitate the performance of his tasks.

8. The inspectors shall transmit their reports to the Secretary-General who will subsequently transmit them to the sponsoring State.

Article 166 (bis)

Disputes

Disputes concerning the interpretation or application of these regulations shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to special arbitration in accordance with Annex VIII of the Convention.

II. DOCUMENTS CONTAINING PROPOSALS FOR AMENDMENTS SUBMITTED BY VARIOUS STATES AND INTEREST GROUPS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

/...

LOS/PCN/SCN.3/WP.7
22 August 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6)

Proposal by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

Article 25 bis

A certificate by a sponsoring state as to financial and technical capabilities shall be conclusive evidence of the matters referred to in article 24, paragraphs 3(c), (d) and (e) and in article 25.

/...

LOS/PCN/SCN.3/WP.8
28 August 1986
ENGLISH
ORIGINAL: ARABIC

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 11 August-5 September 1986

EXPLANATORY TABLE SHOWING THE CONTRACTOR'S FINANCIAL OBLIGATIONS TO THE AUTHORITY 1/

Submitted by the delegation of Saudi Arabia

1. A fee of $500,000 for the cost of processing the application for exploration or exploitation or both. 2/

2.* An annual fixed fee of $1 million from the date of entry into force of the contract. 3/

3.* A production charge beginning one year from the date of commencement of commercial production. 4/

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* Note. Upon the expiry of one year from the date of commencement of commercial production, the contractor shall either pay the annual fixed fee or the production charge, whichever is greater. 5/

1/ Article 13 of Annex III of the Convention.

2/ Article 13, para. 2, of Annex III of the Convention.

3/ Article 13, para. 3, of Annex III to the Convention.

4/ Article 13, paras. 3, 4, 5 and 6, of Annex III of the Convention, and articles 72, 73 and 77 contained in document LOS/PCN/SCN.3/WP.6/Add.2.

5/ Article 13, para. 3 of Annex III of the Convention.

/...

A contractor may choose between the following two methods:

(a) Production charge

Years 1-10: 5%

Subsequent years: 12%

(b) Production charge + Portion of net proceeds

Years 1-10: 2%

Subsequent years: 4%

Should the annual return on investment fall below 15%, the 4% figure shall be adjusted to 2%.

+

Percentage of return on investment	First period	Second period
0% - < 10%	35%	40%
10% - < 20%	42.5%	50%
20% or more	50%	70%

/...

LOS/PCN/SCN.3/WP.9
2 April 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Fifth session
Kingston, Jamaica
30 March-16 April 1987

Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, Netherlands and United Kingdom of Great Britain and Northern Ireland

1. Article 2.5: (a) (i) Replace by: "all expenditures incurred by the contractor 6/ prior to the commencement of commercial production that are related to prospecting, exploration, and development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, 7/ including, *inter alia*, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, research and development, interest, leases, licences and fees; 8/ and".

2. Article 2.6: Replace by: "'development costs of the mining sector' 12/ means the contractor's development costs related to the mining of the resources of the area covered by the contract, including, *inter alia*, application fee, annual fixed fee, costs of prospecting and exploration as well as research and development costs".

3. Article 2.7: (a) Replace by: "'Gross proceeds' means in any accounting year the gross revenues received by the contractor from the sale of polymetallic nodules, semi-processed metals and processed metals from the polymetallic nodules recovered from the area covered by the contract and any other monies attributable to the operations under the contract in accordance with the provisions of this part".

/...

4. Article 2.7: (b) Replace by: "The proceeds from the disposal of any capital assets previously included in contractor's development costs, to the extent such proceeds received exceed the contractor's development costs for that accounting year".

5. Article 2.9: Replace by: "'market value of the processed metals' means the revenue from the sale of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract; if the metals are not sold the 'market value of the processed metals shall be calculated as the product of the quantity of the processed metals and the average price for those metals during the relevant accounting year determined in accordance with Article 75'".

6. Article 2.10: Add: "Net operating losses may be carried forward for 5 or backward for 5 consecutive accounting years".

7. Article 2.12: (a) After: "inter alia" add: "costs of surveying of the contract area".

   (b) After: "employee benefits" add: "contributions to pension-schemes".

8. Article 2.12: (b)-(c) Delete.

9. Article 2.13: Replace: "form" by: "forms".

10. Article 2.14: Replace: "For the purpose of ..." to "except that", by:

    "For the purpose of computing this ratio, the development costs of the mining sector shall be all expenditures according to Article 2.6 including expenditures for new equipment. Original costs for equipment replaced shall be deducted to the extent that these costs have been recovered according to Article 81". Delete the remainder, except for: "If the contractor engages in mining only, 'return on investment' means the ratio of the contractor's net proceeds in that year plus any interest ... less any interest included therein".

/...

11. Article 71: (1) Add: "If the contract deals with exploration only, the operator shall pay an annual fixed fee of US$ [ ]."

(6) Add at the end: "Such refunds shall be accompanied by interest at the prevailing commercial rate".

(7) Replace: "from the 1982 base year" by: "from the year of the approval of the first plan of work as the base year".

12. Article 72.3: Replace by: "the operator's choice may be changed not earlier than [ ]* years after the last choice by notification to the Authority within 90 days of the end of the preceding accounting year, unless the Authority approves of a change earlier".

13. Article 73:
(1-a) [ ] per cent for the first period of commercial
(2-a) production*

(1-b) [ ] per cent for the second period of commercial
(2-b) production*

Delete: "as a result of the payment of the production charge at 4 per cent".

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* The appropriate figures should be determined at a later stage.

/...

14. Article 74: Replace by:

"1. Within 90 days after the end of each accounting year the contractor shall submit to the Authority, its calculation of the production charge for that year and certify that the calculation is in compliance with these regulations. At that time the contractor shall make payment of the amount so calculated.

2. Each contractor shall make available to the accountants such data as are required to determine that the calculation is in compliance with these regulations.

3. The accountants shall verify such compliance and report to the Authority within 60 days after the date of the contractor's submission.

4. If the Authority considers that the calculation of the contractor is not in compliance with these regulations, it shall consult with the contractor. If these consultations do not lead to an agreement within one month Art. 87 shall be applicable."

15. Article 75: Add, at the beginning of the first sentence "In undertaking the calculations mentioned in article 74, if"

Replace the second sentence by: ""In all other cases, the contractor shall submit a fair price to the Authority. If the Authority does not consider it as a fair price, it shall consult with the contractor and in case consultations remain unconclusive, Article 87 shall be applicable."

16. Article 76 (1): Replace: "for each half year" by: "for each year".

Replace: "within 14 days" by: "within a month".

(2) - (4): Delete.

17. Article 77: The figures applicable to the shares for the Authority should be left unspecified.

18. Article 79: (a): Delete.

(c): Delete.

19. Article 80: Replace by: "In any accounting period or part thereof any interest paid by the contractor in respect of the contractor's development costs, development costs of the mining sector, and the contractor's operating costs, shall be allowed. If the Authority considers that the debt-equity ratio and the rates of interest do not reflect existing commercial practice it shall consult with the contractor. If these consultations do not lead to an agreement within" [ ] months, Article 87 shall be applicable".

/...

20. Article 81: Timing of recovery should be left unspecified.

21. Article 82: (2): Replace: "multiplied by the change ..." by: "multiplied by the change of the average index of the accounting year in which such costs were incurred to the average of the current accounting year".

(3): Delete.

(4): Delete: "and the subsidiary rules and procedures of the Authority" and: "less the interim payments already made for that year".

(7): Replace by: "If the Authority considers that the calculation of the contractor is not in compliance with the regulations it shall consult with the contractor. If these consultations do not lead to an agreement within one month, Article 87 shall be applicable".

22. Article 85: (1): Delete.

(2): Replace by: "A contractor shall select its accountants from those who are eligible under the national law and practice of its sponsoring state".

(4): Delete.

(6): Delete.

23. Article 86: Delete.

LOS/PCN/SCN.3/WP.10
4 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Denmark and Norway

Article 76 - Replace by the following:

1. Within 90 days after the end of each accounting year the contractor shall submit to the Authority its calculations of the production charge for that year. The submission shall be accompanied by all data required to determine whether the calculation is in compliance with these regulations. At the same time the contractor shall make payment of the amount so calculated less the amount of the annual fixed fee paid for that year. If the production charge is not paid within the due date, interest shall be paid on the amount at a rate of ...

2. The Authority shall make available to the accountants the calculation and the data mentioned in paragraph 1. The accountants shall verify the compliance with these regulations and report to the Authority within 60 days after the contractor's submission.

3. The Authority shall then make its determination of the production charge for the relevant year. If the Authority considers that the calculation is not in compliance with these regulations, it shall consult with the contractor before making its determination. If the determination is more than the amount paid by the contractor for that year, the contractor shall pay the difference to the Authority with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date the contactor's submission was due. If such determination is less than the amount paid by the contractor, the Authority shall pay the difference to the contractor

/...

with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date when the contractor's submission was due or his overpayment was made, whichever date is the latest. This also applies in cases where the determination has been made subject to procedures according to article 87.

4. The Authority and the accountants may require such further information and documentation from the contractor that they find necessary to carry out their functions according to paragraphs 2 and 3.

Article 82 (3) to (7) - Delete and replace by the following:

3. Within 90 days after the end of each accounting year the contractor shall submit to the Authority its calculations of the Authority's share of attributable net proceeds for that year. The submission shall be accompanied by all data required to determine whether the calculation is in compliance with these regulations. At the same time the contractor shall make payment of the amount so calculated. If the Authority's share of attributable net proceeds is not paid within the due date, interest shall be paid on the amount at the rate of ...

4. The Authority shall make available to the accountants the calculation and the data mentioned in paragraph 3. The accountants shall verify the compliance with these regulations and report to the Authority within 60 days after the contractor's submission.

5. The Authority shall then make its determination of the Authority's share of attributable net proceeds for the relevant year. If the Authority considers that the calculation is not in compliance with these regulations, it shall consult with the contractor before making its determination. If the determination is more than the amount paid by the contractor for that year, the contractor shall pay the difference to the Authority with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date the contractor's submission was due. If such determination is less than the amount paid by the contractor, the Authority shall pay the difference to the contractor with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date when the contractor's submission was due or his overpayment was made, whichever date is the latest. This also applies in cases where the determination has been made subject to procedures according to article 87.

6. The Authority and the accountants may require such further information and documentation from the contractor as they find necessary to carry out their functions according to paragraphs 4 and 5.

/...

LOS/PCN/SCN.3/WP.11
10 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

PART IV - FINANCIAL TERMS OF CONTRACTS

Article 70

Scope of this Part

This Part applies to contracts for exploitation, exploration and exploitation and only exploitation, of polymetallic nodules in the Area. 1/

General provisions

New article 71

Indexation

All financial obligations of the contractors to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this Part shall be adjusted by expressing them in constant terms, relative to 1982 base year.

1/ Based on A3/art.3/para. 4 (c).

/...

New article 72

Payment of interest

All delayed payments or underpayments made by the contractor to the Authority and all refunds made by the Authority to the contractors shall be accompanied by interest at the prevailing commercial rate.

New article 73

Samples

For the purposes of making the calculations required in this Part:

(1) the Contractor shall submit to the Authority monthly composite samples of the nodules recovered and processed metals derived from these nodules;

(2) the samples should be in duplicate, in sealed containers and of a sufficient amount to be required by the subsidiary rules, regulations and procedures.

New article 74

Annual fixed fee

1. Each contractor shall pay to the Authority an annual fixed fee of $US 1 million from the date of entry into force of the contract.

2. The first payment of the annual fixed fee shall be made _pro rata_ to the balance of the calendar year then remaining after the date of entry into force of the contract.

3. Each subsequent payment of the annual fixed fee shall be made on or before 1 January of each subsequent year.

4. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

5. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with Part V:

(a) the annual fixed fee shall be waived for the period of postponement. Payment of the annual fixed fee shall be made when the production authorization is issued, _pro rata_ to the balance of the calendar year then remaining;

/...

(b) the Authority shall refund at the end of that year an amount of the fixed fee, pro rata to the period of postponement during that year.

New article 75

Choice of financial contribution

1. Within a year from the commencement of commercial production, a contractor shall choose to make its financial contribution to the Authority by either:

(a) paying a production charge only, or

(b) paying a combination of a production charge and a share of net proceeds.

2. A contractor shall notify the Authority of its choice in writing.

3. The contractor's choice shall not be changed during the duration of the contract.

Articles 73, 74 and 75 as drafted in document LOS/PCN/SCN.3/WP.6/Add.2 become articles 76, 77 and 78.

New article 79

Quarterly returns and payment of production charge

Subject to the provisions of articles 77 and 78:

(1) the contractor shall submit to the Authority within fourteen (14) days from the end of each accounting quarter returns specifying:

(a) the quantity and metal content of polymetallic nodules produced from the contract area in that period;

(b) the quantity of processed metals produced therefrom in the quarter together with a statement of the processing recovery efficiency factor applicable;

(c) (i) the quantity of processed metals sold during the quarter by transactions on the international terminal market; or

(ii) the quantity sold by transactions other than through an international terminal market and the average price obtained therefrom. In this case, the contractor shall disclose the nature of such transactions;

(d) its calculation of the production charge payable for the quarter;

(2) the contractor shall together with the submission of its quarterly returns make payment to the Authority of the production charge calculated therein.

New article 80

Annual returns

1. Within sixty (60) days from the end of each accounting year the contractor shall submit to the Authority and the accountants certified true copies of its annual returns specifying the items provided for in article 79 (1).

2. The accountants shall within thirty (30) days of the receipt of the contractor's annual returns verify that the returns are in compliance with the rules and regulations contained herein and report to the Authority accordingly.

New article 81

Additional information

1. For the purpose of articles 78 and 79, the accountants and the Authority may require further information and documentation from the contractor as they deem necessary.

2. The contractor shall comply with such written request in the shortest possible term and, in any event, not later than 15 days after the receipt of the request.

New article 82

Yearly calculations

1. Pursuant to the requirements of articles 76, 77 and 78, the Authority shall within 30 days from the receipt of the report make a final determination of:

/...

(a) the quantity and market value of the processed metals produced from polymetallic nodules recovered from the contract area and sold in that accounting year;

(b) (i) the average price of the processed metals in the international terminal market for that accounting year; or

otherwise as may be determined as a fair price in accordance with article (___) 2/ for that accounting year;

(c) the production charge payable by the Contractor for that accounting year.

2. Within the period specified by paragraph 1 the Authority shall notify the contractor of its determinations and the amount of production charge due for that accounting year.

3. The contractor shall make payment of the production charge due as notified by the Authority within 30 days of the receipt of such notice.

4. In the event of a dispute regarding the determinations of the production charge:

(a) the Authority and the contractor shall enter into consultations with a view to reaching an agreement;

(b) where a dispute subsists after consultations between the Authority and the contractor, the contractor shall make payment of the production charge for the accounting year in question in accordance with article 79 on the basis of the determination made and notified by the Authority.

2/ Article 83 as drafted in document LOS/PCN/SCN.3/WP.6/Add.2.

/...

LOS/PCN/SCN.3/WP.11/Corr.1
13 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

Corrigendum

Page 1

1. After the descriptive title "Proposals by the Group of 77", insert the following paragraphs:

> The purpose of the following amendments is to detail and specify the procedures to make the calculations and payments envisaged in article 13 of annex 3 of the Convention.
>
> In preparing these amendments the Group of 77 has paid due regard to the important fact that the Preparatory Commission has no mandate to change or modify specific provisions of the Law of the Sea Convention.

2. For PART IV - FINANCIAL TERMS OF CONTRACTS
   Read PART VI - FINANCIAL TERMS OF CONTRACTS

3. Replace the text of article 70 with the following:

> This Part applies to contracts for exploration only, exploration and exploitation or exploitation only, of polymetallic nodules in the Area. 1/

/...

LOS/PCN/SCN.3/WP.11/Add.1
16 March 1988

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Sixth session
Kingston, Jamaica
14 March-8 April 1988

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

The purpose of the following amendments is to detail and specify the procedures to make the calculations and payments envisaged in article 13 of annex III of the Convention.

In preparing these amendments the Group of 77 has paid due regard to the important fact that the Preparatory Commission has no mandate to change or modify specific provisions of the Law of the Sea Convention.

In the light of document LOS/PCN/SCN.3/WP.11, articles 77 to 87 of document LOS/PCN/SCN.3/WP.6/Add.2 are renumbered as articles 83 to 93.

Article 84 (old art. 78)

Add at the end of paragraph 1 (d) after "development costs" the phrase "for the purposes of this article".

Article 85 (old art. 79)

Start the article the following way: "Attributable net proceeds, for any accounting year", and the rest remains the same.

/...

Article 86 (old art. 80)

Delete the phrase "in respect" at the end of the first line and beginning of the second and insert in its place the phrase "and computed as part".

After the phrase in the fourth line "all the circumstances" add the phrase "after consultation with the contractor".

Article 88 (old art 82)

In paragraph 1 add the phrase "in accordance with article 90" at the end, after the phrase "when payment is made".

In paragraph 7 replace both phrases "at the London Interbank Offering Rate plus 1 per cent" with the phrase "in accordance with article 72". (This article 72 is the one contained in document LOS/PCN/SCN.3/WP.11.)

New paragraph 8:

"In the event of a dispute regarding the determinations of the Authority's share of attributable net proceeds:

(a) The Authority and the contractor shall enter into consultations with a view to reaching an agreement.

(b) Where a dispute subsists after consultations between the Authority and the contractor, the contractor shall make payment of the Authority's share of attributable net proceeds for the accounting year in question, on the basis of the determination made and notified by the Authority in accordance with this article."*

Article 91 (old art. 85)

Replace paragraph 1 with the following:

"The Authority shall maintain a list of independent accountants, certified under the national laws of States Parties, for the purpose of carrying out auditing in compliance with this Part and the subsidiary rules and procedures."

---

* This paragraph has to be complemented when a final decision is made regarding whether there will be a general settlement of disputes scheme, applicable to all Parts of the Code or only to the financial terms of contracts. In both cases, the settlement of disputes scheme should have detailed provisions regarding this Part.

/...

Replace paragraph 2 with the following:

"A contractor shall select its accountants from such a list. In making that selection no accountants shall be eligible for this purpose of the independent certification of the contractors' accounts if such accountants have provided services to that contractor or its affiliates during the three calendar years prior to the date of selection."

Add at the end of paragraph 3, after the words "commencement of commercial production", the phrase "certifying that the requirements of paragraph 2 of this article have been fulfilled".

Add at the end of paragraph 7, after the words "paid by the Authority", the phrase "in accordance with the subsidiary rules and procedures".

/...

LOS/PCN/SCN.3/WP.12
13 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, Netherlands and United Kingdom of Great Britain and Northern Ireland

Article 2

(14) "return on investment" means in any accounting year the ratio of attributable net proceeds in that year to the development costs of the mining sector as at the end of the preceding accounting year.

If the contractor engages in mining only, "return on investment" means the ratio of contractor's net proceeds in that year to the contractor's development costs as at the end of the preceding accounting year.

For the purpose of computing these ratios, the development costs of the mining sector shall be all expenditures according to Article 2.6 including expenditures for new equipment. Original costs for replacement equipment shall be deducted to the extent that these costs have been recovered according to Article 81.

/...

Article 79

In any accounting year, attributable net proceeds 57/ shall be the product of the contractor's net proceeds and the ratio as at the end of the preceding accounting year of the contractor's development costs in the mining sector to the contractor's development costs.

For the purpose of calculating the attributable net proceeds the production charge shall not be deducted from the gross proceeds but from the product mentioned above.

If the contractor engages in mining only, attributable net proceeds shall be the whole of the contractor's net proceeds. 58/

/...

LOS/PCN/SCN.3/WP.13/Rev.1
15 August 1988

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 15 August-2 September 1988

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the delegations of Belgium, Germany, the Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

PART VII

TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE

Article 90

Scope of these regulations

1. These regulations on transfer of technology apply to exploration and exploitation of polymetallic nodules in the Area.

2. The undertakings required by article 92 shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production by the Enterprise, and may be invoked and be given effect only during that period.

3. In the case of joint ventures with the Enterprise, the transfer of technology shall be in accordance with the terms of the joint venture agreement.

/...

Article 91

Use of terms

1. For the purposes of these regulations:

"technology" is defined as the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and the technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose.

2. The transfer of the technology shall be on a non-exclusive basis.

Article 91 (bis)

General provision of information

1. When submitting a plan of work every applicant shall:

(a) Make available to the Enterprise a general description of the equipment and methods to be used in carrying out the plan of work and other relevant, non-proprietary information about characteristics of such technology;

(b) Indicate where the same or similar technology, or components thereof, is available.

2. The applicant shall, within [90] days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out the plan of work, inform the Council in writing of the revisions to the general description and non-proprietary information.

Article 91 (ter)

Assistance to be provided

The contractor shall, during the period mentioned in article 90, paragraph 2, provide assistance to the Enterprise, at its request, in obtaining the same or equally efficient and useful technology on the open market through purchase, licensing or other appropriate agreements or arrangements on fair and reasonable commercial terms and conditions. Such assistance shall include:

(a) Identification of potential developers and suppliers of such technology known to the contractor;

(b) Advice on, and evaluation of, the terms and conditions upon which such technology is offered;

/...

(c) In the course of the Enterprise's negotiations with potential suppliers of technology, advice concerning methods by which this technology can be obtained on the commercial terms and conditions most favourable to the Enterprise.

Article 92

Undertakings

Every contract for carrying out activities in the Area shall contain an undertaking by the contractor to enter into good faith negotiations with the Enterprise, upon the request of the Council, in accordance with articles 94 and 95, with a view to making available to the Enterprise on fair and reasonable commercial terms and conditions the technology, or components thereof, which the contractor uses in carrying out activities in the Area under the contract. Where the contractor is not legally entitled to transfer the technology, the contractor shall undertake all reasonable efforts to acquire the right to transfer the technology if it is possible to do so without incurring substantial costs.

[Article 93]

Article 94

Procedures

1. The Enterprise shall request the Council to invoke the undertakings set out in article 92 only if it finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions, for the exploration and exploitation of an area for which a plan of work has been approved in accordance with annex IV, article 12, of the Convention.

2. The Enterprise shall make all reasonable efforts to obtain such technology on the open market.

3. For the purpose of determining its policy for the acquisition of technology the Enterprise shall conduct a full market survey of potential suppliers which shall take account of existing patents and the relevant advisory services of business associations, universities, and scientific institutes.

4. Thereafter, the Enterprise shall publish a notice of its requirements for technology in appropriate publications.

5. The Enterprise shall issue invitations to tender on the basis of open tender procedures under which all interested suppliers may submit a tender. The technical specifications prescribed in the tender documentation provided to potential suppliers shall be in terms of performance rather than design and be based, where appropriate, on international standards. These specifications shall not be prepared or applied in a manner which restricts the range of possible offers of

/...

appropriate and efficient technology. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer, unless there is no sufficiently precise or intelligible way of describing the required technology and provided that words such as "or equivalent" are included in the tender. Any prescribed time-limit shall be adequate to allow potential suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit the Enterprise shall, consistent with its reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail.

6. If the Enterprise concludes that open tendering procedures have not led to a result which meets the requirements of the tender, it shall use single tendering procedures to establish direct contact with individual suppliers.

7. Before the Enterprise concludes that it is unable to obtain the technology on fair and reasonable commercial terms and conditions through the tendering procedures, it shall request contractors to assist it pursuant to article 91 (ter) to obtain such technology on such terms and conditions.

Article 95

Action by the institutions

1. If the efforts pursuant to article 94 are not successful, the Governing Board of the Enterprise may make a finding in accordance with its procedures that the Enterprise is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions.

2. If the Governing Board of the Enterprise makes such a finding, it shall request the Council to invoke the contractor's undertakings pursuant to article 92. This request shall be accompanied by a report on the efforts made by the Enterprise in accordance with article 94, paragraphs 2 to 7.

3. Upon the receipt of such a request the Council shall ask the Legal and Technical Commission to consider the report and make recommendations in accordance with its rules of procedure as to whether the undertakings should be invoked.

4. The Council shall be deemed to have approved the recommendations of the Legal and Technical Commission after a lapse of 30 days following receipt of the recommendations unless within that period the Council decides otherwise by consensus.

5. Upon approval by the Council of the recommendation to invoke the undertakings, the Secretary-General shall request the contractor to fulfil the undertakings pursuant to article 92.

/...

Article 96

Limitations of the undertakings of the contractor

The contractor may decline to enter into negotiations if it can be demonstrated that:

(a) The Enterprise already has access to the technology through contractual arrangements;

(b) The technology used by the contractor in carrying out activities covered by the contract is technically inappropriate for the exploration or exploitation of the area for which a plan of work has been approved in accordance with annex IV, article 12, of the Convention;

(c) The contractor is prohibited by national security considerations from transferring the technology. A certificate from the Sponsoring State shall be taken as conclusive evidence of this.

Article 97

Disputes concerning undertakings

1. In the event that negotiations between the Enterprise and the contractor pursuant to article 92 do not result in an agreement within [60] days, either party may request the matter to be referred to an independent panel of experts.

2. The panel of experts shall give an opinion on whether:

(a) The Enterprise has made all possible efforts to obtain the relevant technology pursuant to article 94;

(b) A decision by the contractor to decline to enter into negotiations is justified in accordance with article 96;

(c) The contractor has fulfilled the undertakings pursuant to article 92.

3. The Enterprise and the contractor shall endeavour to reach agreement on the number and members of the panel from a list compiled by the Secretary-General upon nominations submitted by the States Parties, and their terms of appointment. If such agreement has not been reached within 45 days after one of them has made the request according to paragraph 1 of the present article, the Legal and Technical Commission shall appoint the panel from the aforementioned list in accordance with its rules of procedure. The members of the panel shall be individuals of both recognized competence in one or more of the fields of law, economics and finance, and of the highest reputation for fairness and integrity.

4. The Enterprise and the contractor, in seeking to reach agreement shall take due account of the opinion of the Panel of Experts.

/...

5. If this procedure does not result in agreement, disputes as to whether the contractor has fulfilled the undertakings pursuant to article 92, subject to article 96, may be submitted by either party to binding commercial arbitration in accordance with UNCITRAL arbitration rules or the arbitration rules of the International Chamber of Commerce.

6. If the finding is that the contractor has not negotiated in good faith, the Authority may impose monetary penalties in accordance with annex III, article 18, paragraph 2. If the finding is that good faith negotiations have taken place but have not resulted in an offer from the contractor which is within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer in order to continue negotiations with the Enterprise.

Article 98

Fair and reasonable commercial terms and conditions

1. The terms and conditions offered by the contractor shall be determined to fall within the range of fair and reasonable commercial terms and conditions solely on the basis of the terms and conditions agreed in comparable cases, especially on current market prices for the same or similar technology. Terms and conditions at variance with those in comparable cases shall not be considered fair and reasonable if they are imposed on the basis of a monopoly position, or on the basis of a concerted effort to restrict competition.

2. The following shall be considered, *inter alia*, to be fair and reasonable commercial terms and conditions:

(a) The obligation of the Enterprise to keep confidential the technology transferred for an indefinite period, including provisions for sanctions such as the payment of damages in the event of non-compliance or the misuse of the information by the staff of the Enterprise;

(b) The obligation of the Enterprise not to transfer to third parties the technology received from the contractor;

(c) A limitation of the responsibility of the contractor for the application of the technology by the Enterprise;

(d) Obligations ensuring the protection and the proper handling of lease equipment;

(e) A limitation on the use of the technology by the Enterprise to exploration and exploitation in the Area;

(f) A provision for the security of payments by means of letters of credit or other devices;

(g) Provisions for binding commercial arbitration in case of disputes about the agreement to transfer technology.

/...

[Articles 99 and 100]

Article 101

Consultation by a group of States Parties

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, the Council may convene a group of States Parties composed of those that are engaged in activities in the Area, those that have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology.

2. This group shall consult together and each State Party shall take appropriate measures within its own legal system to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

Article 101 (bis)

Disclosure of information

These regulations shall not be deemed to require a State Party to supply information, the disclosure of which is contrary to the essential interests of its security.

LOS/PCN/SCN.3/WP.14
8 March 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Seventh session
Kingston, Jamaica
27 February-23 March 1989

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the Group of 77

PART VII

TRANSFER OF TECHNOLOGY

Article 90

Scope of this Part

These regulations on transfer of technology apply to exploration for and exploitation of polymetallic nodules in the Area, including their processing.

Article 91

Use of terms

For the purpose of this Part:

"Technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable

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system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 91 bis

Assistance to be provided by the contractor for obtaining technology

Every contractor shall, during the period the contract is in force, provide assistance to the Enterprise, at its request, in obtaining the same or equally efficient and useful technology on the open market through purchase, licensing or other appropriate agreements or arrangements on fair and reasonable terms and conditions. Such assistance shall include:

(a) Identification of owners and/or suppliers of such technology;

(b) Identification of the persons using such technology, either in full or in part;

(c) Evaluation of the techno-economic efficacy of such technology;

(d) Evaluation of the terms and conditions upon which such technology is offered;

(e) Any other relevant information as may be required by the Enterprise, in particular for the establishment of a data-base.

Article 91 ter

Assistance to be provided by States Parties for obtaining technology

States Parties shall, in co-operation with the Authority, initiate and promote:

(a) Programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, inter alia, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;

(b) Measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

Article 92

Undertakings in contracts on transfer of technology which the contractor is legally entitled to transfer

1. Every contractor shall make available to the Enterprise, on fair and reasonable commercial terms and conditions, whenever the Authority [1] so requests, the technology which it uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer.

2. Every contract for carrying out activities in the Area shall contain undertakings to that end.

Article 93

Undertakings in contracts on transfer of technology which the contractor is not legally entitled to transfer

1. Every contractor shall:

(a) Obtain a written assurance from the owner [2] of any technology used in carrying out activities in the Area under the contract which is not generally available in the open market, and which is not covered by article 92, that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. Such assurance shall be legally binding and enforceable. The document containing the assurance shall be submitted to the Authority along with the application for the approval of the plan of work, and in any case no later than the date of the start of operations under the contract;

(b) Facilitate, upon the request of the Enterprise, the acquisition of any such technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology.

2. If the document containing the assurance required by paragraph 1 (a) is not submitted to the Authority within the time specified therein, the technology in question shall not be used by the contractor in carrying out activities in the Area.

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[1] For the purpose of contract administration, whenever the Authority is mentioned in these regulations, such mention is deemed to refer to the Secretary-General.

[2] The term "owner" shall, for the purposes of these regulations, include assignees, licensees, or suppliers of technology, as the case may be.

/...

best copy available

3. Every contractor shall also acquire from the owner, by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in the Area under the contract which the contractor is otherwise not legally entitled to transfer and which is generally not available on the open market.

4. Every contract for carrying out activities in the Area shall contain undertakings by the contractor in respect of the obligations set out in paragraphs 1 (a) and (b) and 3 above.

5. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right.

6. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work.

Article 94

Procedure for obtaining technology

1. Before requesting that the Authority invoke such undertakings, the Enterprise shall have complied with the following procedures:

(a) (i) The Enterprise shall make every effort to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions, pursuant to Annex IV, article 12, paragraph 3, of the Convention. In doing so, the Enterprise shall make use of the facility provided for in article 91 *bis* above;

(ii) In the process of the acquisition of technology, the Enterprise shall conduct a survey of potential suppliers, taking into account existing patents and related know-how and any other patentable invention as may be relevant. It may for these purposes utilize the advisory services of business or trade associations, scientific research institutions and any other appropriate organization, including government agencies. In fixing time-limits for the submission of tenders, the Enterprise shall be guided by its commercial and operational needs, taking due account of a reasonable time period for potential suppliers to submit tenders;

(b) If the Enterprise is unable to obtain such technology on such terms and conditions, the Governing Board of the Enterprise shall make a finding to that effect in accordance with its procedures;

(c) If the Governing Board of the Enterprise makes such a finding, it shall request the Authority to invoke the contractor's undertakings.

2. Upon the receipt of such a request, the Secretary-General, on behalf of the Authority, shall invoke the undertakings and so inform the Council and the Enterprise.

3. In the case of technology which the contractor is legally entitled to transfer, the Secretary-General shall request that the contractor promptly commence negotiations with the Enterprise to make available to it the technology which the contractor uses in carrying out activities in the Area under the contract, on fair and reasonable commercial terms and conditions.

4. In the case of technology which the contractor is not legally entitled to transfer, the Secretary-General shall request the contractor either:

(a) To enter promptly into negotiations with the owner of the technology to carry out the undertakings specified in article 93, paragraph 3; such negotiations shall be completed within 60 days of the date of receipt of the request by the Secretary-General, and may be extended with the approval of the Secretary-General in consultation with the Enterprise; or

(b) To facilitate the acquisition of any such technology, in case the Enterprise decides to negotiate directly with the owner of the technology in accordance with article 93, paragraph 1 (b).

5. The engagement of the Enterprise in the negotiations specified in paragraphs 3 and 4 above shall be undertaken pursuant to Annex IV, article 6 (f), of the Convention. Such negotiations shall be completed in /̅ 60 7̲ days, unless otherwise extended by agreement of the parties. The parties shall keep the Authority informed of the results of such negotiations.

6. The specific agreement between the contractor or the owner of technology and the Enterprise for the use of such technology shall be in the form of licences or other appropriate arrangements and shall be supplementary to the contract between the Authority and the contractor.

Article 95

Undertakings in contracts with respect to transfer of technology for the benefit of developing States

1. Every contract shall take the same measures as prescribed in articles 92 and 93 of this Part for the benefit of a developing State or group of developing States which has entered into a joint venture with the Enterprise or submitted an application for approval of a plan of work for carrying out activities in a reserved area.

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2. Every contract for carrying out activities in the Area shall contain undertakings by the contractor to that end.

3. Such measures shall be limited to the use of the technology in the exploitation of the part of the area proposed by the contractor which has been designated to be a reserved area pursuant to Annex III, article 8, of this Convention.

4. The contractor shall not be obligated to take such measures if:

(a) Such activities by the developing State or group of developing States would involve transfer of technology to a third State or the nationals of a third State;

(b) Such technology has been requested by the Enterprise or transferred by that contractor to the Enterprise.

Article 96

Procedure for obtaining technology by developing States

1. Before requesting the Secretary-General to invoke the undertakings referred to in article 95, paragraph 2, the States mentioned in article 95, paragraph 1, shall follow *mutatis mutandis* the procedures set forth in article 94, paragraph 1.

2. Upon the receipt of such a request, the Secretary-General shall follow *mutatis mutandis* the procedures set forth in article 94, paragraphs 2, 3, 4, 5 and 6.

Article 96 bis

Joint ventures

In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.

Article 96 ter

Training

The contractor shall draw up practical programmes for the training of personnel of the Authority and of developing States, including the participation of such personnel in all activities in the Area which are covered by the contract, in accordance with article 144, paragraph 2, of the Convention.

Article 97

Limitations on undertakings

The undertakings required by articles 92, 93 and 95 shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production by the Enterprise, and may be invoked during that period.

Article 98

Notification of revisions

Every operator shall notify the Authority in writing of revisions in the description and information made available pursuant to article 32 [3] of these regulations to the Authority of the equipment and methods to be used, and other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available within 90 days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out activities in the Area.

Article 99

Disputes concerning a contractor's undertakings

1. Disputes as to whether offers made by the contractor or the owner of the technology are within the range of fair and reasonable commercial terms and conditions may be submitted by the contractor or the owner of the technology, by the Authority or by the Enterprise to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.

2. If the finding is that the offer made by the contractor or the owner of the technology is not within the range of fair and reasonable commercial terms and conditions, the contractor or the owner of the technology shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action under Annex III, article 18, of the Convention.

Article 100

Disputes concerning other undertakings required by these regulations

1. Disputes concerning undertakings required by articles 92, 93, 95 and 98 of these regulations, other than those submitted under article 99 of these regulations, shall be subject to compulsory settlement in accordance with Part XI of the Convention.

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[3] Document LOS/PCN/SCN.3/WP.6.

2. If the contractor is found to be in violation of these undertakings, the contractor's rights under the contract may be suspended or terminated or monetary penalties may be ordered under Annex III, article 18, of the Convention.

Article 101

Consultation by a group of States Parties

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology.

2. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

3. Each such State Party shall take all feasible measures to this end within its own legal system.

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LOS/PCN/SCN.3/WP.14/Corr.1
17 May 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Seventh session
Kingston, Jamaica
27 February-23 March 1989

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the Group of 77

Corrigendum

Page 2, article 91 ter

The title of the article should read

Co-operation between States Parties and the Authority for transfer of technology

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LOS/PCN/SCN.3/WP.15
27 August 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA - PART X. ACCOUNTING PRINCIPLES AND PRODEDURE (LOS/PCN/SCN.3/WP.6/Add.7)

Proposals by the Group of 77

Article 2 (Use of terms)

Paragraph 4 (new): "For the purposes of this part, 'significant gain or loss' means any total inventory adjustment exceeding a percentage of the total of physical assets or of inventory before adjustment as shall be agreed upon between the Authority and the contractor, in conformity with generally recognized accounting principles."

Article 137 (Scope of this Part)

Paragraph 1: "The regulations contained in this Part provide a uniform system of accounting to record all financial transactions under the contract, including those related to expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract." 1/

1/ A/3 (13) (6) (h) (i).

/...

Paragraph 1 (bis): "The regulations contained in this Part further provide a uniform system of accounting to provide a system and standards for handling funds, materials and equipment and to provide the basis for preparing the reports required by the regulations under the contract."

Article 139 (Currencies)

Paragraph 1: "The United States dollar shall normally be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be converted into United States dollars or another universal unit of account approved by the Authority, at the average of the buying and selling rates quoted by the International Monetary Fund for the date when payment is due."

Article 140 (Accounts and manuals)

Paragraph 1: Delete the words "together with the Accounting Manual".

Paragraph 1 (bis): "The comprehensive chart of accounts and related account definitions shall be consistent with the Accounting Manual submitted by each contractor for approval by the Authority within 60 days from the effective date of the contract".

Article 141 (Accounting for materials and supplies)

Paragraph 2: Substitute the original wording with the following single paragraph: "Materials and supplies furnished from the contractor's stocks shall be charged in accordance with a percentage scale commensurate with their depreciated value agreed upon by the Authority and the contractor."

Paragraph 4: Deleted.

Paragraph 5: Delete the words "and 4".

Paragraph 7: Substitute the original wording with the following: "Each contractor shall conduct, at least once a year or, if special circumstances so warrant, upon the request of the Authority, a physical inventory of the controllable materials maintained by the contractor."

Paragraph 8: Delete the words ", if feasible,".

Paragraph 9: Delete the final sentence.

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Paragraph 10 (new): "The costs referred to in this Part shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor." 2/

Article 142 (Accounting for equipment)

Paragraph 2: "Each contractor shall conduct, every five years, a physical inventory of capitalized physical assets. Each contractor shall conduct more frequent inventories at the request of the Authority."

Paragraph 4: Delete the final sentence.

Article 143 (Personnel costs)

Paragraph 2: Add the following words at the beginning: "Other costs directly incurred in operations under the contract, such as ...".

Add the following new paragraph: "The salaries, wages and expenses of technical employees directly employed in operations under the contract shall not be included in the overhead costs provided in article 151 but shall be charged directly."

Article 145 (bis)

"Costs for the transfer of technology by the contractor to the Enterprise in respect of the area covered by the contract shall be charged, in the event the contractor is requested to acquire from the owner of the technology the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in respect of the area covered by the contract which he is not otherwise legally entitled to transfer." 3/

Article 146 (Charges for affiliates)

Same as former article 147 with the addition of the words "such as competitive bidding" after the words "such other terms and conditions".

2/ A 3 (13) (6) (p).

3/ A3 (5) (3) (c).

Article 147 (Charges for third-party contracts)

Paragraph 1: "The actual direct costs of contracts for technical and other services supplied by third parties shall be charged, provided that such costs are reasonable and necessary and are not higher than those generally charged for comparable work and services, and that, to the extent possible, have resulted from competitive bidding among potential suppliers."

Paragraph 1 (bis): "The policies followed by the contractor with regard to determining the prices for transactions undertaken with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor shall be disclosed in the financial reports submitted by the contractor to the Authority." 4/

Article 151 (Overhead and administrative costs)

Paragraph 2: "Overhead costs not included in paragraph 1 incurred after the effective date of the execution of the contract shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the contractor."

Paragraph 3: Deleted.

Paragraph 3 (bis): "Overhead costs ... shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the Contractor."

Add the following words after "contractor's negligence": "wilful misconduct".

Paragraph 4: Make the following addition: "The agreed rates ..."

Article 154 (Financial reports)

Paragraph 5: "Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report."

Paragraph 6: "Each annual report shall be audited and shall be sent to the Authority within 90 days after the end of each calendar year. The

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4/ United Nations Centre on Transnational Corporations (UNCTC), Conclusions on Accounting and Reporting by Transnational Corporations (1988) (United Nations publication, Sales No. E.88.II.A.18), para. 164.

Authority may make comments and propose adjustments to an annual report provided that such comments and proposed adjustments are made in writing within five years from the date of submission of the report."

Article 155 (Inspection and audit)

Paragraph 1: Substitute the original wording by the following paragraph: "An annual audit shall be carried out by reputable and independent accountants at the cost of the contractor. Notwithstanding the annual audit and if special circumstances so warrant, the Authority may designate reputable and independent accountants to conduct at its expense an additional audit. An additional audit may also be carried out by reputable and independent accountants, upon the request of the Authority and at the cost of the contractor, in the event that the accounts submitted to the Authority are found to be inaccurate or incomplete."

Paragraph 3: Add the words "designated by the Authority" after "accountants".

Article 156 (Retention of books, records and documents)

Paragraph 1: "All books, records and documents referred to in article 155 shall be maintained for a period commensurate with the useful life of the equipment and material used by the contractor and, in any event, not less than seven years from the date of issue."

New article 158 (Penalties)

1. The Authority may seek redress for irregularities which, as the result of an independent audit, are traceable to the inadequate or incomplete compliance by the contractor or the Enterprise with the provisions of this Part. The Authority may also request that the contractor or the Enterprise adjust its accounts accordingly.

2. In the event that the contractor or the Enterprise wilfully persists in failing to comply with a request made by the Authority pursuant to this Part, the Authority may impose upon the contractor or the Enterprise monetary penalties proportionate to the seriousness of the violation.

New article 159 (Disputes)

Disputes concerning the interpretation or application of this Part shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

LOS/PCN/SCN.3/WP.15/Add.1
28 August 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA - PART X. ACCOUNTING PRINCIPLES AND PROCEDURE (LOS/PCN/SCN.3/WP.6/Add.7)

Proposals by the Group of 77

Addendum

Article 143 (Personnel costs)

Substitute the word "net" for "gross".

Article 150 (Legal costs)

Substitute "provided such costs were incurred after the effective date of the contract" with "provided such costs were directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract".

LOS/PCN/SCN.3/WP.16
23 July 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 3
New York, 10-21 August 1992

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

PART X. ACCOUNTING PRINCIPLES AND PROCEDURE

(LOS/PCN/SCN.3/WP.6/Add.7)

Proposals submitted by the European Economic Community
on behalf of the Community and its member States

Article 2 (Use of terms)

Paragraph 1, first sentence

"(1) 'Accounting Manual' means a manual, approved by the Secretary-General, containing the chart of accounts and instructions for the recording of transactions of operations and the preparation and distribution of financial reports."

In paragraph 2 the phrase "analyses, working papers and reports" should be deleted.

Paragraph 3: second sentence should be deleted.

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Article 81 (Accounting principles)*

Paragraph 1 should read as follows:

"(1) All books and accounting records shall be kept, and all costs, expenditures, proceeds and revenues determined and recorded, in conformity with generally recognized accounting principles approved by the Council on the recommendation of the Finance Committee."

Paragraph 2 should read as follows:

"The Council on the recommendation of the Finance Committee shall from time to time review such principles and practices to ensure that they are generally recognized and consistent with such accepted practices."

Paragraph 3 should read as follows:

"All costs, expenditures, proceeds and revenues and all determinations of prices and values referred to in this part shall be based on market prices. Charges for transactions with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor, for services, materials, equipment and other costs, shall be at actual cost on arm's length prices and such other terms and conditions as would have applied in a normal commercial manner in the ordinary course of business had the transactions occurred between unrelated parties or if the parties were not in any special relationship."

Paragraph 4 (new)

"The determination of arm's length prices shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the relevant bodies of the United Nations and other international organizations."

Paragraph 5 (new)

"In all other cases prices shall be determined on the basis of actual costs."

Article 137 (Scope of this Part)

Article 137 should be moved to become paragraph 3 of article 70 and should read as follows:

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* Text of Article 81 is in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1.

"The provisions on accounting contained in this Part provide guidance on the system of financial recording for those contractors that choose in accordance with article 13 (4) of Annex III LOSC to pay a combination of a production charge and a share of net proceeds, to record all financial transactions, funds, materials and equipment necessary to determine the net proceeds and the share that has to be paid to the Authority."

Article 138 (Accounting principles)

Should be deleted.

Article 139 (Currencies)

Should be deleted.

Article 140 (Accounts and manuals)

This article should be renumbered as article 80A and should read as follows:

"(1) Contractors that chose to pay a combination of a production charge and a share of net proceeds shall, together with their decision on the mode of payment, submit for approval by the Finance Committee a comprehensive chart of accounts and related account definitions, together with the Accounting Manual for use under the contract.

"(2) A complete set of books of accounts shall be kept at the relevant contractor's principal place of business. If a relevant contractor has two or more principal places of business, he shall determine at which principal place of business a complete set of books of account is kept and inform the Authority accordingly."

Article 141 (Accounting for materials and supplies)

Article 141 should be renumbered as article 81A and amended as follows:

In paragraph 4 "Authority" should be replaced by "Secretary-General".

Paragraph 6 should be deleted.

Paragraph 7 should be renumbered as paragraph 6 and should read as follows: "Each contractor shall conduct, once a year, or, if special circumstances warrant it, upon the request of the Secretary-General, a physical inventory of the controllable materials which it maintains. The inventory shall be transmitted to the Secretary-General."

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In paragraph 8 the phrase ", if feasible," should be deleted. Paragraph 8 should be renumbered as paragraph 7. And "Authority" should be replaced by "Secretary-General".

In paragraph 9, third sentence, the phrase "for approval" should be deleted. Paragraph 9 should be renumbered as paragraph 8. And "Authority" should be replaced by "Secretary-General".

Article 142 (Accounting for equipment)

Article 142 should be renumbered as article 81B and amended as follows:

In paragraph 2, between the words "or" and "upon" the following phrase should be inserted: ", if special circumstances warrant it,". And "Authority" should be replaced by "Secretary-General".

In paragraph 3 "Authority" should be replaced by "Secretary-General".

In paragraph 4, third sentence, the phrase "for approval" should be deleted. And "Authority" should be replaced by "Secretary-General".

Article 143 (Personnel costs)

To be deleted.

Article 144 (Charges for training programmes)

To be deleted.

Article 145 (Charges for transfer of data)

To be deleted.

Article 146 (Charges for third-party contracts)

To be deleted.

Article 147 (Charges for affiliates)

To be deleted.

Article 148 (Rental payments)

To be deleted.

/...

Article 149 (Insurance costs and losses)

To be deleted.

Article 150 (Legal costs)

To be deleted.

Article 151 (Overhead and administrative costs)

This article is to be renumbered as article 81C.

Article 152 (Credits)

To be deleted.

Article 153 (Duplication of costs, charges and credits)

To be deleted.

Article 154 (Financial reports)

Should be renumbered as article 81D and should read as follows:

"1. Each relevant contractor shall prepare an annual financial report.

"2. Each report shall consist of a profit-and-loss statement, a balance sheet and the calculation of the Authority's share of net proceeds for that year.

"3. The form of the report may be prescribed by the Secretary-General.

"4. Each report shall be a full and accurate financial report for the year covered.

"5. Each annual financial report shall be sent to the Secretary-General within 60 days after the end of each calendar year.

"6. Upon receipt of the financial report the Secretary-General shall make it available to the accountant, selected in accordance with article 85.

"7. The accountant shall verify whether the profit-and-loss statement, the balance sheet and the calculation of the Authority's share of net proceeds are in conformity with the books, accounting records and basic documents as well as with the present regulations.

/...

"8. The accountant shall report his findings to the Secretary-General and the contractor within 60 days.

"9. If the accountant finds that the financial report and the calculation of the Authority's share of net proceeds is not in conformity with the present regulations and if the contractor does not agree with the findings of the accountant, the matter shall be discussed between the Secretary-General, the contractor and the accountants.

"10. If no agreement is reached within 30 days, the provision of article 87 on the settlement of disputes shall apply."

Article 155 (Inspection and audit)

Should be renumbered as article 85A and amended as follows:

Paragraph 1 should be deleted.

Paragraph 5 should be deleted.

Paragraph 7 should be deleted.

Article 156 (Retention of books, records and documents)

Should be renumbered as article 81D and amended as follows:

In paragraph 1 the reference to article 155 should be a reference to article 85A.

In paragraph 2 the reference to article 154 should be a reference to article 81C.

Article 157 (Enterprise)

Should be renumbered as article 87A and should read as follows:

"The accounting regulations in this part apply to the activities of the Enterprise in the Area if it chooses in accordance with article 13 (4) of Annex III to pay a combination of a production charge and a share of net proceeds to the Authority."

LOS/PCN/SCN.3/1993/CRP.18
14 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

SUGGESTED AMENDMENTS TO THE DRAFT FINAL REPORT OF SPECIAL COMMISSION 3 (LOS/PCN/SCN.3/1992/CRP.17)

Proposals by the delegations of Belgium, Germany, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

1. Title: replace "Draft final report" by "Draft progress report".

2. Paragraph 1: add at the end "at an appropriate time".

3. Paragraph 2: replace "of the United Nations Convention" by "adopted by the third United Nations Conference".

4. Paragraph 3 (b), at the end: replace "para. 1" by "para. 2".

5. Paragraph 13: after "LOS/PCN/SCN.3/WP.6/Rev.1" insert "as a basis for further discussion".

6. Paragraph 14: delete "and WP.6/Rev.1".

7. Paragraph 24: add at the end "as a basis for further discussion".

8. Paragraph 38: add at the end "as a basis for further discussion".

9. Paragraph 39: delete "and LOS/PCN/SCN.3/WP.6/Add.4/Rev.1".

/...

10. Paragraph 41, 1st line: after "had been prepared" insert "by the Secretariat".

11. Paragraph 49: add at the end "as a basis for further discussion".

12. Paragraph 52: add at the end "as a basis for further discussion".

13. Paragraph 65: replace the paragraph by:

> "During informal consultations it was possible to reach a certain degree of consensus on the revision of some articles of the working paper LOS/PCN/SCN.3/WP.6/Add.8 on the basis of preliminary suggestions made by the Chairman in document LOS/PCN/1992/CRP.15. That enabled the Chairman to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1 as a basis for further discussion."

14. Paragraph 68: replace the paragraph by:

> "There is a general understanding that the Special Commission is not in a position to resolve the outstanding issues as long as there is no agreement on the areas of concern of Part XI of the Law of the Sea Convention and its annexes III and IV. Therefore the Special Commission is of the view that it is advisable to suspend its deliberations on the seabed mining code and to revert to the matter at an appropriate time."

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LOS/PCN/SCN.3/1993/CRP.18/Corr.1
29 March 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

SUGGESTED AMENDMENTS TO THE DRAFT FINAL REPORT OF SPECIAL COMMISSION 3 (LOS/PCN/SCN.3/1992/CPR.17)

Proposals by the delegations of Belgium, Germany, Italy Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

Corrigendum

Page 2, paragraph 13, fourth line

For LOS/PCN/1992/CRP.15 *read* LOS/PCN/1992/CRP.16

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LOS/PCN/SCN.3/1993/CRP.19
14 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

COMMENTS SUBMITTED BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES ON DRAFT FINAL REPORT OF SPECIAL COMMISSION 3 (LOS/PCN/SCN.3/1992/CRP.17)

1. The European Community and its member States consider that, taken as a whole, the draft progress report of Special Commission 3 represents a summary of discussions in that group to date.

2. The report reflects the fact that in a number of areas, particularly the Draft Mining Code, it has not been possible to reach agreement. The report sums up the differing views which a number of delegations expressed and reflects the fact that it will be necessary to revert to the matters addressed by Special Commission 3 at an appropriate time.

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LOS/PCN/SCN.3/1993/CRP.20
25 March 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh Session
Kingston, Jamaica
22 March - 2 April 1993

COMMENTS BY THE DELEGATION OF BRAZIL ON BEHALF OF THE GROUP OF 77 ON DRAFT FINAL REPORT OF SPECIAL COMMISSION 3 (LOS/PCN/SCN.3/1992/CRP.17)

1. Following extensive consultations, it was possible for the group of 77 to outline what they would like to see reflected in the document before us. It was felt that the relevant paragraphs of document LOS/PCN/SCN.3/1992/CRP.17 essentially reflect, in a straightforward and summary fashion, the tenor of discussions within Special Commission 3 on the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area. Where this is not the case, the delegations of the Group of 77 will submit amendments as appropriate.

2. Delegations did voice their concerns, however, on the following issues: It was felt that the title of CRP.17 is not appropriate, since as the Group has pointed out, we should not foreclose the option of returning to previous sections of the draft mining code at some future point, provided that the programme of work of Special Commission 3 at forthcoming sessions of the Preparatory Commission could be adjusted accordingly.

3. It was felt among the delegations of the Group of 77 that the conclusions contained in paragraphs 67 and 68 are oversimplified and need to be thoroughly reviewed. Paragraph 67 states that: "While progress has been made in identifying and resolving some issues, the Special Commission 3 has not yet reached final agreement on any of the working papers." In this respect, the Group of 77 believes that several of the provisions of the draft mining code have in effect met with the approval of delegations.

4. We are well aware of the fact that many provisions of Part XI and Annex III were lifted out of the United Nations Convention on the Law of the Sea and inserted into the draft mining code. If we were to suggest that there has been no final agreement on several key provisions of the mining code, that might lead to a harsh and incorrect conclusion that a significant part of the Sea-Bed Mining Regime of Part XI and Annex III are to be understood as outstanding and subject to renegotiation.

5. The report goes on to state that "there is a general perception that the Special Commission has only limited time available to discharge its mandate in the most effective manner possible." This conclusion raises the question as to whether Special Commission 3 has fulfilled its mandate or is ever likely to do so. Though it might be claimed by some that a full second reading of the entire draft mining code could extend the work of Special Commission 3 beyond what is reasonable, the report does not clearly reflect the current stage of negotiations nor whether circumstances might warrant further discussion of outstanding issues.

LOS/PCN/SCN.3/1993/CRP.21
1 April 1993
ENGLISH
ORIGINAL: RUSSIAN

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

Proposal by the delegation of the Russian Federation

Add the following new paragraph at the end of the introductory section of document LOS/PCN/SCN.3/1992/CRP.17:

> "The Commission notes that nothing in this report, nor any absence of objections to the provisions of the report, should be interpreted as prejudging the position of countries, which will be determined by whether agreement is reached on the outstanding issues currently under discussion".

PART 2

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Distr.
GENERAL

LOS/PCN/130
17 November 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA

CONSOLIDATED PROVISIONAL FINAL REPORT

VOLUME I

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Chapter IV

DRAFT PROVISIONAL REPORT OF SPECIAL COMMISSION 3*

A. Overview of the work of Special Commission 3

250. The object of the present draft provisional report is to provide an overview of the work of the Special Commission in discharging its mandate and to assist delegations in focusing their attention on areas where further work might be desirable.

251. Special Commission 3 was charged with the mandate to prepare rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area, i.e., the seabed mining code.

252. Special Commission 3 commenced its work (under the chairmanship of Mr. Hans Sondaal of the Netherlands) by identifying the issues contained in annex III, article 17, which require rules, regulations and procedures. These issues are: administrative procedures relating to prospecting, exploration and exploitation in the Area; the size of areas (mine sites); duration of operations; performance requirements including assurances, pursuant to article 4, paragraph 6 (c), of annex III of the Convention; categories of resources; renunciation of areas; progress reports; submission of data; inspection and supervision of operations; prevention of interference with other activities in the marine environment; transfer of rights and obligations by a contractor; procedures for transfer of technology to developing States in accordance with article 144 of the Convention and for their full participation in activities in the Area; mining standards and practices, including those relating to operational safety; conservation of marine resources and protection of the marine environment; definition of commercial production; qualification standards for applicants; establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors; apportionment of proceeds from mining operations; the incentives referred to in article 13 of annex III of the Convention; implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2 (d), of the Convention. Though the list of issues provided for in annex III, article 17, is extensive, it is not exhaustive. There are matters relating to the conduct of activities in the Area which are not included in that article, such as:

(a) Protection of human life (art. 146);

(b) Erection, emplacement and removal of installations used for carrying out activities in the Area (art. 147, para. 2);

(c) Prescription of period other than five years for issuance of production authorizations (art. 151, para. 2 (a));

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* This chapter is a revised version of the report which originally appeared in document LOS/PCN/SCN.3/1992/CRP.17.

(d) Implementation of paragraph 7 of article 151;

(e) Criteria and procedures for the implementation of the sponsorship requirements (annex III, art. 4, para. 3);

(f) Objective and non-discriminatory standards for the purpose of selection among applicants for production authorizations (annex III, art. 7, para. 2);

(g) Financial matters other than those referred to in annex III, article 17, e.g., annex III, article 13.

253. To facilitate its consideration of these issues, Special Commission 3 requested the Secretariat to prepare draft working papers on which the discussions in the Special Commission would be based.

254. In 1984, the Secretariat prepared a series of working papers:

(a) LOS/PCN/SCN.3/WP.1 - Seabed Mining Code (Background paper);

(b) LOS/PCN/SCN.3/WP.2 - Draft Regulations on Prospecting, Exploration and Exploitation - application for approval of plans of work (Background paper);

(c) LOS/PCN/SCN.3/WP.2/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - (application for approval of plans of work);

(d) LOS/PCN/SCN.3/WP.3 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

(e) LOS/PCN/SCN.3/WP.3/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - content of application;

(f) LOS/PCN/SCN.3/WP.4 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

(g) LOS/PCN/SCN.3/WP.5 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - payment of fee (Background paper).

255. After the discussion of the working papers listed in the paragraph above, and in order to provide a focus and a tool for further deliberations, the Special Commission requested the Secretariat to prepare a comprehensive document incorporating the contents of the above-mentioned papers in the form of draft regulations. That document was issued in 1985 as LOS/PCN/SCN.3/WP.6 (Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area) and was accepted by the Special Commission as the basis for discussion.

256. The Special Commission later requested the Secretariat to prepare a series of addenda to document LOS/PCN/SCN.3/WP.6 in order to complete the set of working papers required to discharge its mandate. The following is a brief description of the contents of the working papers contained in document

LOS/PCN/SCN.3/WP.6 and its addenda and of the discussions conducted in Special Commission 3. (The complete texts of the working papers are found in the annexes to the present report.)

B. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (LOS/PCN/SCN.3/WP.6)

257. This document was discussed at 31 formal and informal meetings of Special Commission 3 in 1985 and 1986.

258. In the discussion of the document, differing views were expressed as to whether the application for designation of an area for the Authority and approval of a plan of work should occur in one stage, or whether the application would be composed of two stages: submission and approval of a plan of work. The central issue was the degree of detail to be included in the plan of work in the one-stage process, where the plan would have to cover both the applicant's mine site and that ultimately designated for the Authority, and the time of approval of the plan of work. The costs of preparing a detailed plan of work for the Authority site would have to be borne by the applicant in the one-stage process.

259. The reasons for supporting the one-stage approach were that: (a) the Convention did not provide for a two-stage procedure; (b) the Authority should not be placed at a disadvantage in obtaining knowledge of the particulars of the area for which an application was submitted; (c) since the Authority was responsible for the selection of the reserved area, it was necessary for the Authority to have access to as much information as possible to enable it to make an informed decision on its selection; (d) in the absence of a plan of work for each of the two areas (one for the applicant, one reserved for the Authority), the Authority would have to rely solely on geological data, which would not be sufficient for an accurate assessment of the equal commercial value of both areas. It was also stressed that the one-stage approach would simplify administrative procedures.

260. On the other hand, the reasons for supporting the two-stage approach were that: (a) it had a legal basis in the Convention; (b) an applicant was not obliged to draw up a plan of work for the Enterprise since the Enterprise was an independent body; (c) it was not practical to draw up two plans of work since this would be costly and the plan of work for the Enterprise would probably be out of date by the time the Enterprise went into commercial production; (d) since the designation of areas would be done by random selection, it would obviate the need for submission of any data and would be the best guarantee for selecting two areas of equally estimated commercial value.

261. In the discussion a reference was also made to the relationship between transfer of technology and the plan of work, the need to incorporate indications of training programmes which were mainly linked to operations in the plan of work and financial terms of the contract relating to the application fee. Mention was also made of the issue of proprietary information, and the view was

expressed that it should not be used to avoid giving the Authority the information it would need.

262. In June 1988 the Chairman of Special Commission 3 (Mr. Jaap Walkate of the Netherlands), after revising document LOS/PCN/SCN.3/WP.6, taking into account the views expressed issued document LOS/PCN/SCN.3/WP.6/Rev.1 as a basis for further discussion. In order to resolve the "one stage/two stage" question, the Chairman proposed that the application should be submitted in two parts, the first part containing data and information to be submitted by the applicant before the designation of the area and the second part containing data and information to be submitted by the applicant before the final approval of the plan of work.

263. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6 see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.16, LOS/PCN/L.26 and LOS/PCN/L.32. The issues contained in LOS/PCN/SCN.3/WP.6/Rev.1 were taken into account in the preparation of addenda to LOS/PCN/SCN.3/WP.6.

C. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Procedures for Application, Approval and Issuance of Production Authorizations (LOS/PCN/SCN.3/WP.6/Add.1)

264. The document was discussed during nine meetings of the Special Commission in 1989 and 1990.

265. Some of the views supported the production limitation formula, since it was felt that it would help integrate and stabilize mineral markets when seabed mining was in production. While stating concern for a stable market for the metals produced from deep seabed mining, some delegations were of the opinion that the formula was an adequate means for assuring favourable introduction of metals into the market. This opinion held that the inflexibility of the free market aspects of the deep seabed mining industry, as well as the inertia inherent in the long lead-in time for deep seabed mining projects, was far more important than any perceived inflexibility of the trend line in the production limitation formula. Concern was expressed about the effects of unrestricted or subsidized seabed mining operations on producers and consumers alike. At the same time the Special Commission was informed that the issue of "subsidized production" was being addressed in the negotiations being conducted by the General Agreement on Tariffs and Trade (GATT) and that the results should eventually enable the specific question of deep seabed mining subsidies to be settled.

266. Other views characterized the production limitation formula as an artificial restraint both on the commencement of seabed mining and on production levels. It was emphasized that the formula itself was one of the serious obstacles to universal acceptance of the Convention. In addition, it was stated, *inter alia*, that: (a) the limitation of deep seabed mining would not benefit consumer countries; (b) seabed mining would take place gradually in response to increased demand and substantially higher metal prices and,

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therefore, not destabilize the market; and (c) mining companies would not want to destabilize the market since that would have a direct effect on the economic viability of their deep seabed mining projects.

267. After detailed consideration of LOS/PCN/SCN.3/WP.6/Add.1 within the Special Commission, it was apparent at the time that a consensus had not emerged as to the suitability of the text as a basis for negotiation. For this reason a revision of the document was not prepared.

268. For further details on the issues of substance addressed during consideration of LOS/PCN/SCN.3/WP.6/Add.1, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.74 and LOS/PCN/L.79.

D. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (LOS/PCN/SCN.3/WP.6/Add.2)

269. The document was discussed at 30 meetings of Special Commission 3 in 1986-1988 and one of the main concerns expressed in the discussions regarded the current system of taxation, as prescribed in the Convention. Some of the issues raised in that context were whether the required payments imposed too heavy a burden on seabed miners and whether the choice of the system of payment which might involve an annual fixed fee, a production charge or a combination of a production charge and a share of net proceeds was too complicated.

270. In the course of discussions varying views were expressed. On the one hand it was felt that: changed economic and market circumstances called for a review of the system of payment and the rates of taxation; the front-end payments that were to be incurred before mining income was generated were onerous; and it was preferable to establish two levels of annual fixed fees - one for exploration only and the other for exploration and exploitation.

271. On the other hand, it was stated that: before mining income was generated, a reasonable payment should be made once prospective deep seabed miners had secured exclusive mining areas and had obtained exploration rights; lower rates of taxation of the mining income would not only reduce the revenues of the Authority, but also could give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a more lenient tax system; and mining States would diminish the revenue benefits for the Authority by seeking a reduction in tax revenues to it while imposing their own national taxes on operators.

272. Other issues raised in the discussions were that some of the complicated accounting and bureaucratic tasks involved in determining the tax base and the tax payments under the existing system might be too burdensome and expensive for both the Authority and the operator. It was also felt that it would be difficult at the time to attempt to develop a detailed set of rules for the purpose of taxation since the seabed mining industry had not yet been developed. It was suggested therefore that it would be more appropriate to establish

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certain principles on the basis of which detailed rules and regulations might be elaborated when deep seabed production was imminent.

273. Document LOS/PCN/SCN.3/WP.6/Add.2 was revised by the Chairman taking into account views expressed and was issued as document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 on 25 May 1989 as a basis for further discussion.

274. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.2, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.38, LOS/PCN/L.52 and LOS/PCN/L.59.

E. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (Draft Regulations on Financial Incentives) (LOS/PCN/SCN.3/WP.6/Add.3)

275. The document was discussed at two meetings of Special Commission 3 in 1987. Differing views were expressed as to whether incentives should be an integral component of the financial rules or whether they should be provided solely at the discretion of the Authority and only in exceptional circumstances.

276. The reason for favouring the incentives as an integral part of the financial rules was that the rules would then contain a clear mechanism and an institutional framework based on stable criteria and non-discriminatory procedures under which uniform and predetermined incentives would be provided automatically in compliance with conditions detailed in advance.

277. The other point of view was that the provision of financial incentives should not be viewed as creating an exception to the financial terms of contract. The availability of incentives should not be automatic but should only be awarded on an ad hoc, case-by-case basis at the discretion of the Authority. It was also suggested that the provision of such incentives should not amount to subsidizing seabed mining, especially to the detriment of land-based mining.

278. Since the discussion concentrated mostly on procedural rather than substantive issues, the Chairman decided not to revise the original draft but to include it as part B in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1, which contained the revised draft financial terms of contract.

279. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.3, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.52.

F. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Draft Regulations on the Transfer of Technology until Ten Years after Commencement of Commercial Production by the Enterprise)

(LOS/PCN/SCN.3/WP.6/Add.4)

280. The document was discussed at 28 meetings of Special Commission 3 in 1988 and 1989 and set out, inter alia, procedures for the Enterprise to follow if it failed to obtain deep seabed mining technology on the open market at fair and reasonable commercial terms and conditions.

281. The working paper attempted to strike a balance between the obligation of the Enterprise to undertake adequate efforts to procure technology on its own, and the obligation of the contractor to assist it and, if required, to negotiate acceptable terms for its sale if the Enterprise failed to obtain such technology.

282. Differing views were expressed in the discussion.

283. According to one view, the seabed mining technology to be transferred to the Enterprise should cover processing technology as well. It was also felt that "essential national security reasons", referred to in article 302 of the Convention, should not constitute a loophole for States seeking to avoid technology transfer obligations. If the technology could not be transferred for security reasons, it could not be utilized by the operator in the international seabed area, since that would be disadvantageous to the Enterprise. It was further suggested that procedures requiring that the organs of the Authority review their decision to invoke a contractor's undertaking to transfer technology could cause unnecessary delays and obstruct the implementation of transfer obligations.

284. According to the other view, the provisions for the compulsory transfer of technology were a disincentive to investment and technology development, and the Convention did not envisage the transfer of processing technology. It was pointed out that, in regard to seabed mining technology, the Enterprise should adhere to regular commercial practices since adequate technology would be available on the open market. The Enterprise would be assisted by contractors who would provide general descriptions of equipment and methods of such technology and information as to where similar technology might be obtained. It was also suggested that joint ventures would provide the most effective means for the transfer of technology, which would be subject to conditions to be agreed among the parties concerned.

285. Another view expressed was that there was doubt whether the Convention required the obligatory transfer of technology to developing States if they were a partner in a joint venture with the Enterprise. It was felt that in that case the obligation to transfer would be limited only to the Enterprise and not to the other partner. Consequently, it was stated, there appeared to be a contradiction between these provisions and those of annex III, article 5. On the other hand, it was pointed out that there was no such contradiction, since

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those provisions related to different aspects and therefore both the Enterprise and developing States would be eligible for the transfer of technology.

286. A further view was expressed that there was a need for an article on training, to be included in any provisions dealing with the transfer of technology, since that was part of the obligation of the contractor and was consistent with the requirements that the contractor would have to fulfil in respect to his plan of work.

287. The working paper of the Secretariat, LOS/PCN/SCN.3/WP.6/Add.4, was revised by the Chairman and was issued as document LOS/PCN/SCN.3/WP.6/Add.4/Rev.1 on 9 August 1990 as a basis for further discussion.

288. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.4, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.59, LOS/PCN/L.64 and LOS/PCN/L.69.

G. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Protection and Preservation of the Marine Environment from Activities in the Area) (LOS/PCN/SCN.3/WP.6/Add.5

289. The document was discussed at 25 meetings of the Special Commission in 1990 and 1991. In the course of the discussions it became clear that all States wished to ensure the protection and preservation of the marine environment. However, it was also felt that very little was known at the time regarding the environmental consequences of deep seabed mining and that significantly more long-term and substantial research would have to be conducted to enable informed decisions to be made at the appropriate time.

290. The working paper had been prepared by the Secretariat taking into account the mandate of the Authority to adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from exploration for, and exploitation of the resources of the Area. The draft regulations drew upon a number of sources: first, the relevant articles of the Convention, particularly the provisions to be found in Parts XI and XII; secondly, the legislation and regulations of States concerned with deep seabed mining; and thirdly, other multilateral conventions, such as that relating to Antarctic mineral resources.

291. The most difficult aspect of the working paper had been to ensure that there was a fair balance between the need to preserve and protect the marine environment and the development of the resources of the international seabed area; and that the regulations sought to define the meaning of "serious harm to the marine environment" by excluding certain effects on the marine environment arising from activities in the Area assessed or judged to be acceptable by the Authority according to the relevant rules and regulations. In so doing, the draft regulations ensured that deep seabed mining would not be unreasonably restricted.

292. In order to assess the effect of each contractor's activities in the Area, the draft regulations provided for the establishment of environmental reference zones. They expressly provided for the submission of an environmental report or an environmental impact statement, based on the relevant data collected during the prospecting stage, that had to be submitted to the Legal and Technical Commission before the approval of any plan of work for exploration. At the exploitation phase, before the Legal and Technical Commission recommended the approval of a plan of work for exploitation, each applicant would be required to submit an environmental impact statement, which would contain more detailed requirements.

293. In order to assist the Authority in monitoring the contractor's compliance with the terms and conditions of the contract and with the rules and regulations relating to the protection and preservation of the marine environment arising from activities in the Area, contractors would be required to submit an annual report on the effects of their activities in the Area on the marine environment. The regulations established a system of inspection enabling the Authority to send its inspectors on board vessels and installations used by the contractor in a form of cooperation by the Authority and by the Sponsoring State or States. The provisions also provide for procedures for the emergency suspension or adjustment of operations.

294. The provisions on the liability of contractors for serious harm to the marine environment were of crucial importance for deep seabed mining, where harm might occur beyond national jurisdiction and where harm which is likely to occur is harm to the marine environment itself rather than to a person or property.

295. Views of a general nature were expressed, one of which was the need to conduct further environmental studies of the marine environment in the Area. Safe methods of exploitation could be established only on the basis of appropriate comprehensive experimental data and information on any effects of exploitation of polymetallic nodules on the living or non-living components of the marine environment and associated ecosystems. Effective monitoring of the Area was needed. In this regard, the view was expressed that since the start-up of deep seabed mining would be delayed, this would provide ample time for careful research aimed at protecting the marine environment. Some views stressed the potentially serious problems that could be posed by deep seabed mining. It was held that since deep seabed mining might not occur for many years to come, the Preparatory Commission should map out a strategy for preserving the seabed environment and not merely establish a set of formal procedures. This view also called for the mobilization of public opinion and governmental awareness and suggested that an ad hoc group of experts be set up to make recommendations in that connection.

296. There was general support for convening a seminar on the environmental impact of deep seabed mining and the means for assessing it. It was felt that the seminar would enhance the Special Commission's knowledge to enable it to draft these regulations. A number of delegations with technical data and expertise in the subject-matter, including some registered pioneer investors, stated their willingness to cooperate in the exchange of data and make some of their experts available for the seminar.

297. Four meetings of the Special Commission were devoted to the seminar on the environmental aspects of deep seabed mining. Experts from the Federal Republic of Germany, France, Norway, Sweden, the Union of Soviet Socialist Republics, the United States of America, Japan and India participated in the Seminar in their personal capacities as guest speakers. Among the issues addressed by the seminar were: environmental aspects of deep seabed mining; characteristics of the deep seabed environment; chemical analysis in assessing the environmental impact of seabed mining; the relationship between manganese nodule formation and the sedimentary processes in the Clarion-Clipperton area and its importance for environmental studies on deep seabed mining in one test area; the impact of deep seabed activities over time and space; field and computer simulation for predicting the impact of seabed mining on the ocean environment; characterization of manganese nodule processing waste; the current state of seabed mining and environmental research in Japan; the Deep Ocean Mining and Environmental Study (DOMES); relevant research conducted at the Scripps Institution of Oceanography; the need for large-scale experiments and monitoring; the status of seabed mining in India; the role of environmental reference zones; optimization of international reference areas and the application of the "precautionary principle" in assessing the impact of seabed mining.

298. The working paper was revised by the Chairman following several sessions of informal consultations and was issued under a new title, "Protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area", in document LOS/PCN/SCN.3/WP.6.Add.5/Rev.1 on 27 August 1991 as a basis for further discussion.

299. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.5, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.79, LOS/PCN/L.84 and LOS/PCN/L.89.

H. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accommodation of Activities in the Area and in the Marine Environment) (LOS/PCN/SCN.3/WP.6/Add.6)

300. The document was discussed during five meetings of Special Commission 3 in 1991. There was a convergence of views that all activities should be accommodated in the Area and in zones outside national jurisdiction as long as those activities did not interfere with one another. It was felt also that while it was important to promote the principle of "reasonable regard", some priorities might have to be determined, and that the role of competent international organizations should be more clearly defined.

301. All these issues were addressed in informal consultations conducted by the Chairman, which enabled him to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.6/Rev.1 on 28 June 1991.

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302. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.6, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.89.

I. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accounting Principles and Procedure)

(LOS/PCN/SCN.3/WP.6/Add.7)

303. The document was discussed at 15 meetings of the Special Commission in 1991 and 1992. Two main views evolved from the discussion: on one hand, it was felt that complicated accounting principles and procedures were not required, especially if the contractor selected the production charge system of paying revenues to the Authority. It was pointed out that once the quantities of polymetallic nodules recovered and the amounts of processed metals produced by the contractor were known, the production charge system would be simple enough to avoid the need for a detailed examination of the contractor's accounting records.

304. The other view was that, while there were practical distinctions between payment options, those distinctions should not be seen as exempting some of the contractors from complying with accounting principles and procedures applicable to others. Furthermore, the Authority should retain the right to examine the contractor's accounting records since they would have to contain information and data other than the system of payment, e.g., development costs and other costs borne by the contractor.

305. It was also felt that, even if the choice was made to pay only the production charge, it would not be sufficient to create a situation where the Authority would not be empowered to verify how the contractor determined the production charge he would be required to pay. It was further argued that the Authority, in order to dispel any doubts on how the production charge was determined, should have access to all information going beyond the quantity of nodules and the average market price of processed metals.

306. After detailed consideration of the working paper, an informal compromise proposal relating to the calculation of the production charge was suggested. It provided for an arrangement between the contractor and the Authority immediately prior to commencement of commercial exploitation by which certain parameters relating to the quantities of processed metals to be produced in a given period and financial arrangements would be agreed upon. It was suggested that this would be a kind of confidence-building measure which would reduce the likelihood of the Authority needing to resort to a safeguard clause entailing an examination of the contractor's books.

307. Initially it appeared that the above informal proposal might command a consensus among the delegations participating in the informal consultations. It was also the view of several delegations that certain procedures of an accounting nature should apply on a uniform basis to all contractors, and not only on an exceptional basis, as would be the case in the proposed "safeguard clause". It was stressed in this context that the Authority and the contractor

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must know, from the onset of their contractual relationship, what information would be required to settle any dispute, including information of a financial and accounting nature to be submitted by the contractor in close consultation with the Authority. However, after some discussion certain reservations were still maintained, especially with respect to the need for a "safeguard clause" which the Authority could invoke in situations where any discrepancies existed between the accounting of the contractor and that of the Authority. At that point it was felt that further discussions within the informal consultations or formal meetings of the Special Commission on the subject would not achieve a positive result.

308. Following lengthy discussions at both the formal and informal level within the Special Commission, it became apparent that a consensus which could provide a basis for an integrated revised text had not emerged. For this reason a revision of the document has not been prepared.

309. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.7, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.94 and LOS/PCN/L.99.

J. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Labour, Health and Safety Standards)
(LOS/PCN/SCN.3/WP.6/Add.8)

310. The document was discussed at six meetings of the Special Commission during the spring session of 1992.

311. The view was expressed that existing conventions adopted under the auspices of the International Maritime Organization (IMO) and the International Labour Organization (ILO), as well as national legislation on health and safety standards, were adequate to cover activities in the Area and therefore it was not necessary to duplicate the provisions of those conventions in the seabed mining code.

312. On the other hand, it was stated that although existing conventions were relevant, seabed mining would be a unique activity requiring new standards since current ones would not be appropriate in all cases.

313. A further view was expressed that the key issue to be resolved was to what extent existing national and international norms were related to activities in the Area. It was suggested that all human activities in the Area would take place on board vessels which would be under the jurisdiction of States, i.e., the Flag State. Therefore, any norms would be applicable only to those vessels and not to the deep seabed itself. The view was also expressed that there was a degree of competence of the Authority in regard to health and safety standards as provided for in the Convention. Since the mining code would be a self-contained instrument without prejudice to existing criteria and since there was a difference between activities conducted outside the Area, which were not subject to the supervision of the Authority, and those conducted inside the

Area, which would be subject to such supervision, this distinction should be explicitly stated.

314. All these issues were addressed in informal consultations conducted by the Chairman. Consensus was reached on a revised text, which was issued as document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1 on 15 January 1993.

315. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.8, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.99 and LOS/PCN/L.106.

K. Conclusion

316. By the end of the tenth session of the Preparatory Commission, Special Commission 3 had completed the first reading of the draft mining code on the basis of the working papers prepared by the Secretariat. Some working papers had been revised by the Chairmen taking into account the proposals and positions put forward by different delegations. Although some issues remain to be resolved, a number of the provisions of the draft mining code have in effect met with the approval of delegations. This report appraises the progress made to date in Special Commission 3 in the consideration of the various documents comprising the draft mining code. It also intends to shed light on the issues that require further consideration.
